MASTER'S REPORT

IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI.
CENTRAL DIVISION.

IN EQUITY.

No. 270

and other companion cases Nos. 271 to 428, both inclusive, except those cases which have been dismissed.

AMERICAN INSURANCE COMPANY, A CORPORATION,
PLAINTIFF,

VS.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO R. E. O'MALLEY, SUCCESSOR IN OFFICE TO JOSEPH B. THOMPSON), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, AND ROY McKITTRICK (SUCCESSOR IN OFFICE TO STRATTON SHARTEL), ATTORNEY GENERAL OF THE STATE OF MISSOURI, DEFENDANTS.

REPORT OF HON. PAUL BARNETT, SPECIAL MASTER.

FILED_____.

INDEX

PRELIMINARY OBSERVATIONS 1

I. WITNESSES, and Their Relations to the Parties 5

II. INSURANCE GROUPS 18

III. CO-OPERATIVE ACTIVITIES 25

A. THE NATIONAL BOARD AND LOCAL BOARDS 25

B. INSURANCE EXECUTIVES ASSOCIATION 25

Companies in the Missouri Rate Case in the Federal Court not affiliated with Insurance Executives Association 27

C. WESTERN INSURANCE BUREAU 30

D. WESTERN UNDERWRITERS ASSOCIATION 30

E. MISSOURI INSPECTION BUREAU 30

F. SUBSCRIBERS ACTUARIAL COMMITTEE 31

1. Organization, functions, meetings, officers and members 31

2. Management of rate litigation 34

3. Employment of attorneys 36

G. CO-OPERATION THROUGH COMMITTEES 37

IV. CHARLES R. STREET 43

V. INSTITUTION AND PROGRESS OF THE LITIGATION 50

A. INSTITUTION, NATURE AND CONTROL OF THE SUITS 50

B. LIST OF THE COMPANION CASES NOW PENDING IN THIS COURT 52

C. STATE COURT LITIGATION. DECREES IN STATE COURT RESTITUTION CASES 60

D. THE SETTLEMENT 66

E. THE DECREE OF THIS COURT 67

F. THE DECLARATION OF TRUST 75

G. IMPOUNDMENT OF FUNDS AND DISTRIBUTIONS 111

H. PAPERS FILED IN THIS COURT AND INTERLOCUTORY INJUNCTION 123

VI. EXPENSES OF LITIGATION AND ASSESSMENTS 125

VII. NOTICES AND KNOWLEDGE IN GENERAL 133

A. ACQUAINTANCE WITH PENDERGAST, O'MALLEY and McCORMACK 133

B. KNOWLEDGE OF AGENTS SERVING ALL COMPANIES 133

C. NOTICES TO ALL COMPANIES 138
D. THE GOVERNING COMMITTEE 142

VIII. MR. STREET'S USE OF MONEY TO PROCURE A SETTLEMENT 145

IX. THE MEETING IN NEW YORK IN 1935 153

X. PAYMENT OF THE 1935 ADVANCE BY THE NEW YORK COMPANIES. THE KNOWLEDGE AND ACTIONS OF THEIR OFFICERS 178
IN GENERAL 178
GROUP ELEVEN 180
GROUP TWELVE—
A. At the Home Office 186
B. At the Chicago Office 201
GROUP TWENTY 202
GROUP TWENTY-THREE 205
GROUP THIRTY-FOUR 207
GROUP FORTY-THREE 207
GROUP FIFTY-SIX 210

XI. THE MEETING IN HARTFORD IN 1935 214

XII. PAYMENT OF THE 1935 ADVANCE BY THE HARTFORD COMPANIES. THE KNOWLEDGE AND ACTIONS OF THEIR OFFICERS 240
IN GENERAL 240
GROUP TWO 242
GROUP FIVE 242
GROUP EIGHT 243
GROUP TWENTY 245
GROUP TWENTY-TWO 245
GROUP TWENTY-EIGHT 245
GROUP THIRTY-ONE—
A. At the Home Office 247
B. At the Chicago Office 249
GROUP FORTY 251
GROUP FORTY-FIVE 251
GROUP FIFTY-THREE 255

XIII. CHANGE IN TERMS OF PROPOSED SETTLEMENT 258
A. COMMUNICATION WITH NEW YORK COMPANIES 258
B. COMMUNICATION WITH HARTFORD COMPANIES 261

XIV. NEGOTIATION OF SETTLEMENT 266

XV. THE MEETING IN NEW YORK IN 1936, AND COLLECTION OF THE GENERAL ASSESSMENT 277
A. THE MEETING 277
B. COLLECTION OF THE ASSESSMENT 284
C. TOTAL AMOUNT OF THE ASSESSMENT 307

XVI. KNOWLEDGE AND CONDUCT OF INDIVIDUAL OFFICERS AND EMPLOYEES ---- 308
GROUP ONE ---- 308
GROUP TWO ---- 312
GROUP THREE ---- 315
GROUP FOUR ---- 321
GROUP FIVE ---- 324
GROUP SIX ---- 327
GROUP SEVEN ---- 332
GROUP EIGHT ---- 343
GROUP NINE ---- 345
GROUP TEN ---- 347
GROUP ELEVEN ---- 349
GROUP TWELVE ---- 353
GROUP THIRTEEN ---- 365
GROUP FOURTEEN ---- 370
GROUP FIFTEEN ---- 374
GROUP SIXTEEN ---- 386
GROUP SEVENTEEN ---- 391
GROUP EIGHTEEN ---- 399
GROUP NINETEEN ---- 405
GROUP TWENTY ---- 408
GROUP TWENTY-ONE ---- 415
GROUP TWENTY-TWO ---- 417
GROUP TWENTY-THREE ---- 423
GROUP TWENTY-FOUR ---- 430
GROUP TWENTY-FIVE ---- 434
GROUP TWENTY-SIX ---- 440
GROUP TWENTY-SEVEN ---- 455
GROUP TWENTY-EIGHT ---- 460
GROUP TWENTY-NINE ---- 464
GROUP THIRTY ---- 469
GROUP THIRTY-ONE ---- 477
GROUP THIRTY-TWO ---- 482
GROUP THIRTY-THREE ---- 489
GROUP THIRTY-FOUR ---- 494
GROUP THIRTY-FIVE ---- 502
GROUP THIRTY-SIX ---- 505
GROUP THIRTY-SEVEN ---- 508
GROUP THIRTY-EIGHT ---- 514
GROUP THIRTY-NINE ---- 519
GROUP FORTY ---- 524
GROUP FORTY-ONE ---- 528
GROUP FORTY-TWO ---- 533
GROUP FORTY-THREE ---- 539
GROUP FORTY-FOUR ---- 547
GROUP FORTY-FIVE ---- 560
GROUP FORTY-SIX ---- 566

GROUP FORTY-SEVEN 575
GROUP FORTY-EIGHT 586
GROUP FORTY-NINE 590
GROUP FIFTY 594
GROUP FIFTY-ONE 598
GROUP FIFTY-TWO 600
GROUP FIFTY-THREE 602
GROUP FIFTY-FOUR 610
GROUP FIFTY-FIVE 616
GROUP FIFTY-SIX 620
GROUP FIFTY-SEVEN 626
NORTH BRITISH AND MERCANTILE GROUP 628

XVII. MR. STREET AND THE SUBSCRIBERS ACTUARIAL COMMITTEE 629

XVIII. MR. STREET AND MR. FOLONIE 646

A. Mr. Folonie cleared checks for Mr. Street in 1935 646

B. Mr. Folonie cleared checks for Mr. Street in 1936 658

C. Reasons why Mr. Folonie did not ask for explanation friction between Mr. Folonie and Mr. Street 663

D. Mr. Folonie's knowledge, and his participation in the settlement 672

CONCLUSION 679

IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI.
CENTRAL DIVISION.

IN EQUITY.

No. 270

and other companion cases Nos. 271 to 426, both inclusive, except those cases which have been dismissed.

AMERICAN INSURANCE COMPANY, A CORPORATION, PLAINTIFF,

VS.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO R. E. O'MALLEY, SUCCESSOR IN OFFICE TO JOSEPH B. THOMPSON), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, AND ROY McKITTRICK (SUCCESSOR IN OFFICE TO STRATTON SHARTEL), ATTORNEY GENERAL OF THE STATE OF MISSOURI, DEFENDANTS.

MASTER'S REPORT.

To

The Honorable Kimbrough Stone,
Senior Judge of the United States Circuit Court of Appeals for the eighth circuit;

The Honorable Albert L. Reeves,

and

The Honorable Merrill E. Otis,
Judges of the District Court of the United States for the Western District of Missouri,

sitting as the judges of a district court of said judicial district organized under Section 266 of the judicial code, as amended (28 U. S. C. A., Sec. 280).

The undersigned, Paul Barnett, was appointed by this honorable court as special master in chancery, by an order made and entered in each of the above entitled causes, on the third day of July, 1939. The undersigned accepted such appointment and qualified as such master by filing a master's oath with the clerk of this court on the eighth day of July, 1939. Pursuant to the terms of his commission, the master appointed Miss Emily Miles to take and transcribe the testimony heard by the master; she accepted such appointment, and has taken and transcribed such testimony. Such transcript, consisting of four volumes of typewritten matter, is returned herewith.

The master conferred with counsel to determine where and when the testimony of the witnesses might be taken with the most convenience and dispatch, and then set times and places for the hearings before the master. The first of such hearings was held in Chicago, Illinois, beginning July 27, 1939. Other hearings were held in New York City, Hartford, Connecticut, Chicago, Illinois, St. Louis, Missouri, and Kansas City, Missouri. The taking of testimony was concluded on September 11, 1939.

The master has expressed no conclusions of law, believing it to be the better practice in cases pending before three judges sitting pursuant to Section 266 of the judicial code as amended, that the judges decide questions of law in the first instance, without the previous advice or recommendations of a master in chancery.

After hearing a substantial portion of the testimony, the master concluded that the question of guilty knowledge or the absence thereof (upon the part of insurance executives representing various plaintiffs herein) concerning the actions and conduct of Charles R. Street must be determined, not from direct evidence, but from inferences from the direct evidence. In addition thereto, in nearly every instance the legal question was involved as to whether the evidence was, as a matter of law, sufficient to permit an inference of guilty knowledge, as distinguished from the question as to whether or not such an inference should be drawn. This observation is not

applicable to the plaintiffs in the so-called "Great American group" for reasons appearing in the testimony. The master accordingly conferred with his honor, Judge Merrill E. Otis (the other judges of this court being then absent from Kansas City, Missouri), and the honorable Judge Otis advised the master to merely analyze and arrange the evidence, leaving the questions of fact to be decided by the court in the first instance. This advice has been followed by the master.

The master has prepared but one report to be filed in each of the 137 companion cases for two reasons: (1) Much of the testimony is pertinent to the same identical issues which are common to all of the cases and (2) there are practices peculiar to the fire insurance business which throw some light upon the question as to whether the conduct of various individual insurance executives in connection with the payment of money to Charles R. Street, and the reaction of such executives toward the conduct of Mr. Street, justifies an inference of guilty knowledge upon the part of any one or more of such executives. This court may or may not conclude that, in that connection, it is permissible to inquire whether the conduct of any particular insurance executive was the normal reaction of a man engaged in and familiar with the practises of the insurance business, as evidenced by the reactions of all insurance executives who had acted in the same or similar circumstances.

Because the facts will be found by the court in the first instance, the master has not felt at liberty to treat any testimony as irrelevant or impertinent, or to omit the substance of any testimony, except in a few cases where record evidence definitely fixed a date, an amount, or other transaction, in which cases the estimates and hazards of opinion, and qualified statements by witnesses who testified from memory have not always been reported with care to preserve the evidence that the testimony was a mere opinion, estimate or qualified statement. In every case where there seemed to be any contention on either side that there was any doubt concern-

ing the fact, the master has attempted to so report the evidence that the conflicts in testimony sharply appear, and the evidence that witnesses testified from memory or merely gave an estimate or qualified their statements has been preserved in the master's report. Statements contained in the digest of the evidence are the substance of the testimony of the witnesses. Statements by the master are contained in notes, designated as such.

Explanations of Citations.

Citations (referring to the transcript of the testimony) are to the printed transcript which has been prepared by the parties and filed in this court. A person's name appearing in parenthesis indicates the witness, the substance of whose testimony precedes the citation. The Roman numeral following the name of the witness indicates the volume of the printed transcript in which the evidence referred to appears. The Arabic numeral following the name of a witness indicates the page of the printed transcript so referred to. An Arabic numeral, followed by a dash and another Arabic digit or digits, indicates that the evidence referred to appears beginning on the page indicated by the first numeral and ending on the page indicated by the digit or digits after the dash. Two or more Arabic numerals separated by a comma or commas, following the name of a witness, indicates that the witness has testified to the same effect two or more times, as evidenced at the separate places in the printed transcript indicated by such separate numerals.

I.

WITNESSES, AND THEIR RELATIONS TO THE PARTIES.

The master observed the demeanor and appearance of all of the witnesses when they testified, except the witnesses, Robert R. Barbour, O. E. Lane, Walter F. Brady and F. J. Breen. The testimony of these four witnesses was taken by deposition. The master observed nothing about the demeanor or appearance of any witness that indicated that the witness was incredible.

THE FOLLOWING WITNESSES TESTIFIED:

A.

1. **George S. Allen,** New York City: now is and in 1935 and 1936 was chief accountant of the Svea Fire and Life Insurance Company, Ltd., and secretary of the Hudson Insurance Company (Allen, II, 153).

B.

2. **R. V. A. Baker:** general auditor of Tokio Marine and Fire Insurance Company. In 1935 and 1936 he was supervisor of accounts of that company (Baker, II, 218).

3. **Robert P. Barbour:** Montclair, New Jersey: now is and in 1935 and 1936 was United States manager of the Northern Assurance Company group of Insurance Companies, including London and Scottish Insurance Company. His office is at 80 John Street (Barbour, I, 337, 339).

4. **John R. Barry:** vice-president of Carroon & Reynolds, Underwriting managers (Barry, II, 117).

5. **George H. Bell,** Hinsdale, Illinois: was on the Subscribers Actuarial Committee in the years 1935 and 1936 (Bell, I, 136, 137; Hobbs, I, 5), and at various times since 1915. He is western manager of the National Fire Insurance Company and its affiliated companies. He is not now and was not in 1935 or 1936 on the board of directors of any of these companies (Bell, I, 137). He had entire charge of all litigation for his companies in their western department (Bell, I, 164). He is manager of the western department (Bell, I, 146) and as such has

sole authority to take care of all legal expenses and matters of litigation (Bell, I, 150).

6. **Homer H. Berger,** Kansas City, Missouri: attorney at law. His firm was employed in the present litigation in May, 1930, and since September, 1930, he has been the one in that firm that has been attending to the litigation with Mr. Folonie (Berger, III, 391).

7. **R. M. Bissell,** Farmington, Connecticut: in 1935 and 1936 he was president of the companies (except the Northwestern) in the Hartford Fire Insurance Company group (Bissell, II, 442, 443).

8. **Laurens R. Bowden,** New York City: now is and in 1935 and 1936 was first vice-president of Bankers' and Shippers' Insurance Company group (Bowden, II, 75).

9. **Walter F. Brady,** Larchmont, New York: vice-president and secretary of Merchants Fire Assurance Corporation. In 1935 and 1936 he was secretary of that company. He had supervision of whatever was done in his office (Brady, I, 371).

10. **Frank J. Breen:** in March, 1936, he became president of Standard Fire Insurance Company of New Jersey. In 1935 he was General Agent out of Chicago (Breen, I, 383).

11. **S. M. Buck,** Evanston, Illinois: member of the Subscribers Actuarial Committee since December, 1937, Western Manager of the Firemen's Fund Insurance group, prior to March 15th or 16th, 1938 (Buck, I, 231, 245).

C.

12. **John J. Campbell,** 2912 Linwood, Kansas City, Missouri: in charge of the office of the custodian of the funds impounded in these cases. His employment began sometime in 1932 or 1933. He now has charge and direction of all the books and records of the custodian's office (Campbell, III, 519).

13. **Harold T. Cartlidge,** New York City: deputy United States manager of the Royal Insurance Company, Ltd., and second officer with its affiliated Fire and Marine Companies. The title has been changed, but his position, duties and prerogatives were the same in 1935 and 1936 (Cartlidge, I, 462; Warner, III, 355).

14. **John R. Cashel,** Evanston, Illinois: now is and in 1935 and 1936 was western manager of the Providence Washington Insurance Company (Cashel, I, 315).

15. **Harry G. Casper:** assistant United States manager until July 1, 1935, and thereafter United States manager of Eagle Star Insurance Company, Ltd. (Casper, II, 105-106).

16. **Sheldon Catlin,** Philadelphia: now is and in 1935 and 1936 was vice-president of the Insurance Company of North America group (Catlin, II, 271).

17. **Herbert A. Clark,** River Forrest, Illinois: member of the Subscribers Actuarial Committee, vice-president of the Firemen's Insurance Company of Newark, New Jersey (H. Clark, I, 249; Hobbs, I, 5), and of each of its affiliated companies (H. Clark, I, 249); manager of the western department of the Firemen's group (Weiser, I, 214). He was a member of that committee when this litigation originated and was located at Chicago then, but was not with these companies. He has been with these companies since 1925, and on the committee since 1921 (H. Clark, I, 250).

18. **Robert R. Clark:** manager in the United States of the Caledonian Insurance Company for approximately the last twelve years (R. Clark, II, 415). Has been in the insurance business twenty-five or thirty years (R. Clark, II, 439).

19. **Carsten Claussen,** Chicago: now is and in 1935 and 1936 was manager of the western department of London & Lancashire Insurance Company and all of the companies in the group (Claussen, I, 317).

20. **John R. Cooney,** Newark, New Jersey: now is and in 1935 and 1936 was president of the Firemen's group of companies (Cooney III, 14-15).

21. **Bernard M. Culver:** now is and in 1935 and 1936 was president of each of the companies in the Continental or "America Fore" group (Culver, III, 397-8; Emes, II, 326, 336; Koop, I, 396). He succeeded Paul L. Haid as president of the companies in this group (Haid, II, 374).

D.

22. **Hart Darlington:** now is and in 1935 and 1936 was United States Manager of the Norwich Union Society, manager of its New York department, and president of the Eagle Fire Insurance Company (Darlington, II, 288).

23. **William C. Dent:** now is and in 1935 and 1936 was assistant secretary in charge of underwriting of the Potomac Insurance Company (Dent, II, 264).

24. **Frederick M. Dominick,** Braintree, Massachusetts: now is and in 1935 and 1936 was assistant secretary of the Boston Insurance Company and the Old Colony Insurance Company (Dominick, II, 490).

25. **C. A. Dosdall,** St. Paul, Minnesota: now is and in 1935 and 1936 was secretary of St. Paul Fire and Marine Insurance Company and Mercury Insurance Company, in charge of their fire business west of the Mississippi river, including Missouri (Dosdall I, 168; McKown, I, 166).

26. **Ray B. Duboc,** Kansas City, Missouri: president of the Western Fire Insurance Company (Duboc, III, 255).

E.

27. **Edward West Elwell:** in 1935 and 1936 was assistant manager of the British Companies, and vice-president of the American Company in the Royal Exchange Assurance group. He is now United States manager of the British Companies, and president of the American Company in that group (Elwell, III, 415-416; Koenig, II, 72).

28. **W. H. Emes:** in 1935 and 1936 was auditor of the American Fore group and is now comptroller of that group, which is the same position, except as to title (Emes, II, 326, 336). He is now at the home office, 80 Maiden Lane (Moeckel, II, 308).

29. **J. D. Erskine:** now is and in 1935 and 1936 was secretary of the Insurance Executives Association (Erskine, II, 347). He is the assistant manager of the association, acting under Paul Haid (Nourse, II, 125; Koop, I, 414, 410).

30. **Esmond Ewing:** now is and in 1935 and 1936 was vice-president and secretary of the Travelers Fire Insurance Company (Ewing, III, 26).

F.

31. **Robert J. Folonie,** Chicago, Illinois: licensed lawyer for 39 years and attorney for plaintiffs in these companion cases since their inception (Folonie, III, 156-7) as chief counsel (Berger, III, 391). He had supervision of the Kentucky rate case (Folonie, III, 212).

G.

32. **G. N. Gardner:** now is and in 1935 and 1936 was vice-president of Merchants Fire Insurance Company (Gardner, III, 297).

33. **John F. Gilliams,** Collingswood, New Jersey: now is and in 1935 and 1936 was vice-president of the Camden Fire Insurance Company (Gilliams, III, 110).

34. **I. Lloyd Greene:** in 1935 and 1936 was vice-president of Boston Insurance Company and Old Colony Insurance Company (Greene, II, 503).

H.

35. **Paul L. Haid:** now is and in 1935 and 1936 was president of the Insurance Executives Association (Smith, III, 32; Erskine, II, 347; Haid, II, 373). Before May 1, 1932, he was president of the companies in the America Fore group (Haid, II, 373).

36. **Harry Halprin:** in 1935 and 1936 was assistant secretary and assistant branch secretary of the Royal Exchange group (Halprin, II, 93). He is Mr. Koenig's assistant (Koenig, II, 73).

37. **John C. Harding,** Evanston, Illinois: member of the Subscribers Actuarial Committee since 1926. He now is and in 1935 and 1936 was resident executive vice-president of the Springfield Fire and Marine (Harding, I, 279-280; Hobbs, I, 5) group of companies, in charge of the Western department. He is the manager of the western department (Harding, I, 279-280; Schlesinger, II, 535-536).

38. **William R. Hedge:** now is and in 1935 and 1936 was president of the Boston Insurance Company and of the Old Colony Insurance Company (Hedge, II, 517).

39. **Ernest A. Henne,** Evanston, a suburb of Chicago: now chairman of the Subscribers Actuarial Committee, having succeeded Mr. Street in December, 1936. He was active in the affairs of the Actuarial Committee from 1935 until he became chairman, and attended its meetings regularly (Henne, I, 20). He has been on the committee since 1932 (Henne, I, 21). Since about July, 1931, he has been manager of the western department in charge of the western office of the following companies (1) Continental Fire Insurance Company, (2) Fidelity-Phenix, (3) Niagara, (4) American Eagle, and (5) First American (Henne, I, 65-66), and was held responsible for the underwriting results in 18 states including Missouri (Henne, I, 66). He is in entire control of the Western office outside of imperial questions of policy (Culver, III, 414). He is vice-president of all of these companies (Henne, I, 65). He was vice-president of the Continental in 1935 (Henne, I, 23; Hobbs, I, 5).

40. **Bernard E. Hobart** (I, 300): auditor in the Chicago office (Harding I, 290) of the Springfield Fire and Marine group (Schlesinger, II, 537).

41. **Russell D. Hobbs,** Chicago, Illinois: is and since September, 1935, has been secretary of the Subscribers Actuarial Committee (Hobbs, I, 3). Before he became secretary, he was Mr. Parker's assistant and worked very close to him all the time (Hobbs, I, 16).

42. **Joseph K. Hooker:** now is and in 1935 and 1936 was vice-president of the Automobile Insurance Company and of the Standard Fire Insurance Company (Hooker, III, 130).

43. **Fred A. Hubbard:** president of the Globe and Rutgers Insurance Company in 1935 and 1936. He severed his connections with that company in September, 1938 (Hubbard, II, 7). He is now president of the Hanover Fire Insurance Company (Van Horne, I, 456; Hubbard, II, 9-10).

I.

44. **T. J. Irvine:** U. S. manager of the Phoenix Assurance Company of London, and President of the three other companies in the Phoenix Assurance group since May 1, 1935. Prior to that he was secretary for the group (Irvine, II, 200).

K.

45. **Gilbert Kingan:** attorney for and manager of the Eastern department of the United States and London and Lancashire Fire Insurance Companies; president of the Orient Insurance Company and of the Safeguard Insurance Company and United States manager of the Law Union and Rock Insurance Company (Kingan, III, 18).

46. **S. Clarence Kline:** now is and in 1935 and 1936 was superintendent of agencies of the Tokio Marine and Fire Insurance Committee (Kline, II, 184).

47. **F. W. Koeckert,** New York: now is and in 1935 and 1936 was United States manager of the Commercial Union Assurance Company, Ltd., of London, England, (Koeckert, I, 495; Hobbs, I, 5), the British General Insurance Company, the Palatine Insurance Company and the Union Assurance Company; president of the Commercial Union Fire Insurance Company which is a New York, American, affiliated company, and of the American Central Insurance Company of St. Louis, Missouri; manager of the California Insurance Company of San Francisco, California (Koeckert, I, 495); now is and in 1935 and 1936 was the New York member of the Subscribers Actuarial Committee (Koeckert, I, 516).

48. **John Koenig,** Rutherford, New Jersey: now is and in 1935 and 1936 was branch secretary of the United States branches of the Royal Assurance of London and of the State Assurance Company, Ltd., of Liverpool, and secretary and treasurer of the Provident Fire Insurance Company (Koenig, II, 68).

49. **William H. Koop:** now is and in 1935, 1936, 1937 and 1938 was chairman of the board of North Carolina Home Insurance Company, and president of all of the other companies in the Great American Insurance group (Koop, I, 393-394), including the Detroit Fire and Marine Insurance Company (Waldron, I, 211).

50. **Wilfred Kurth,** Ridgeway, New Jersey: chairman of the board of the Home Insurance Company. In 1935 and 1936 he was president of that company (Kurth, I, 422-423).

L.

51. **O. E. Lane,** Westtown, Chester County, Pennsylvania: now is and in 1935 and 1936 was president of the companies constituting the Fire Association of Philadelphia group (Lane, I, 363; Powrie, I, 111).

52. **Frank D. Layton:** now is (Bell, I, 164) and in 1935 and 1936 was president of the National Fire Insurance Company and of the Franklin National, the Merchants and Traders, the Mechanics and Traders and the Transcontinental Insurance Companies (Layton, III, 75).

53. **W. L. Lerch:** now is and in 1935 and 1936 was manager of the Underwriters' Grain Association (Lerch, I, 305-306).

54. **George C. Long, Jr.,** Hartford, Connecticut: president of the companies in the Phoenix Insurance group, except that he is not president of the Minneapolis Fire and Marine or the Central States Fire Insurance Companies. As he recalls, he is vice-president of each of the latter, but may not be vice-president of the Central States. In 1935 and 1936 he was vice-president of the major companies and had supervision over the West (Long, III, 84). He has been in the insurance business since 1904 (Long, III, 108).

55. **F. B. Luce,** Providence, Rhode Island (Luce, II, 526): now is and in 1935 and 1936 was vice-president of the Providence Washington Insurance Company (Luce, II, 519).

M.

56. **F. W. Maasen:** now is and in 1935 and 1936 was auditor of the London Assurance Corporation group (Maasen, II, 343; Nourse, II, 124).

57. **W. R. McCain,** Hartford, Connecticut: now is and in 1935 and 1936 was president of the companies constituting the Aetna Fire group (McCain, III, 331).

58. **A. L. McCormack,** Richmond Heights, St. Louis County: has been engaged in the insurance business practically all of his life. He thinks that in 1935 he was a member of the board of directors of the Missouri Association of Insurance Agents. He thinks he was president of that organization in 1933 and 1934. He has been president of the Central States Life Insurance Company

and a member of its board of directors (McCormack, III, 228-229). He has been manager of an adjustment company in St. Louis (Folonie, III, 188).

59. **J. C. McKown:** now is and in 1935 and 1936 was one of the secretaries of St. Paul Fire and Marine Insurance Company and Mercury Insurance Company (McKown, I, 165) in charge of underwriting east of the Mississippi River and in Canada (McKown, I, 166).

60. **Frank B. Martin,** Plainfield, New Jersey: not now connected with the Yorkshire Insurance Company group, but in 1935 and 1936 was acting manager. He is a partner of Frank and DuBois, who were the United States managers of this group, and he gave his attention to the operations of the insurance group. His connection with these companies terminated March 31, 1937 (F. Martin, II, 190).

61. **Ronald R. Martin,** Montclair, New Jersey: now is and in 1935 and 1936 was United States manager and member of the local board of directors of the Atlas Insurance Company (R. Martin II, 1).

62. **Louis Moeckel,** 3250 Perry Avenue, the Bronx: now is and in 1935 and 1936 was supervisor of the statistical department of the Continental Insurance Company (Moeckel, II, 305) in its New York office (Henne, I, 47). He is not an executive (Moeckel, II, 306).

63. **Thomas C. Moore:** now is (Dent, II, 264) and in 1935 and 1936 was vice-president and manager of the Potomac Insurance Company (Moore, I, 529).

N.

64. **Everett W. Nourse,** New York: now is and in 1935 and 1936 was United States manager of the London Assurance Corporation group. He is president of the Manhattan Insurance Company (Nourse, II, 122) and a member of the Insurance Executives Association (Nourse, II, 124).

P.

65. **J. L. Parsons,** New York City: now is and in 1935 and 1936 was president of Crum & Forster (Parsons, III, 317-318; Wyatt, II, 163).

66. **Theodore Plessner:** president of the North American Insurance Company since December 19, 1938. In 1935 and 1936 he was its vice-president and treasurer (Plessner, II, 145).

67. **A. F. Powrie,** Park Ridge, Illinois, a suburb of Chicago: now is and since 1923 has been manager of the western department of the Fire Association of Philadelphia group (Powrie, I, 109-110; Lane, I, 363). He is not an accountant (Powrie, I, 127).

R.

68. **Charles A. Reekie:** now is and in 1935 and 1936 was vice-president and secretary of the Detroit Fire and Marine Insurance Company (Reekie, I, 212).

69. **W. R. Reilly:** assistant secretary of the Dubuque Fire and Marine Insurance Company, acting under Mr. Weiser (Reilly, I, 228).

70. **Gustavus Remak, Jr.:** president of The Insurance Company of the State of Pennsylvania continuously since September 1, 1913 (Remak, II, 220).

71. **John J. P. Rodgers:** now is and in 1935 and 1936 was vice-president and treasurer of The Insurance Company of the State of Pennsylvania (Rodgers, II, 225; Remak, II, 220).

S.

72. **Robert D. Safford,** West Hartford, Connecticut: now is and in 1935 and 1936 was vice-president and assistant secretary of the Travelers Fire Insurance Company (Safford, III, 43; Ewing, III, 26). He has charge of its western department (Ewing, III, 30).

73. **Frank A. Schlesinger,** Springfield, Massachusetts: treasurer of three companies of the Springfield Fire and Marine group and assistant treasurer of a nonresident subsidiary, namely the Michigan Fire and Marine. Since 1935 his position has been changed with the New England. He was elected treasurer of that company about two years ago (Schlesinger, II, 528-529).

74. **Cecil F. Shallcross:** United States manager for the North British and Mercantile Insurance Company, and president of the Commonwealth Insurance Company of New York, the Homeland Insurance Company, the

Mercantile Insurance Company of America and the Pennsylvania Fire Insurance Company of Philadelphia (Shallcross, II, 342).

75. **C. A. Siedel:** until August, 1935, he was assistant secretary of the Stuyvesant Insurance Company. Since then he has been its secretary (Siedel, II, 28).

76. **Frank M. Smalley:** now is and in 1935 and 1936 was president of the Glens Falls Insurance Company and of the Commerce Insurance Company (Smalley, II, 37).

77. **J. D. Smart:** now is and since last September has been president of the New Hampshire Fire Insurance Company and of the Granite State Insurance Company. In 1935 and 1936 he was vice-president of the New Hampshire Fire Insurance Company and secretary of the Granite State Insurance Company (Smart, III, 115).

78. **Charles H. Smith,** Chicago: in 1935 and 1936 he was the assistant general agent of the Hartford Fire Insurance Company and the Citizens Insurance Company (Smith, I, 334). He has served continuously as a member of the Subscribers Actuarial Committee since June, 1937 (Smith, I, 334).

79. **Clyde P. Smith:** now is and in 1935 and 1936 was secretary of the Hartford Fire Insurance Company (Smith, III, 30, 38-39) and of the Citizens Insurance Company and the New York Underwriters. He is assistant secretary of the Northwestern Fire and Marine and Twin City Insurance Companies (Smith, III, 38). He is a bookkeeper (Smith, III, 39).

80. **Paul B. Sommers,** Maplewood, New Jersey: now is and in 1935 and 1936 was president of the American Insurance Company and Columbia Fire Insurance Company (Sommers, II, 131-132).

81. **George W. Swallow:** now is and in 1935 was secretary-treasurer of the New Hampshire Fire Insurance Company, and secretary of the Granite State Insurance Company (Swallow, III, 126).

T.

82. **William H. Talcott:** auditor of the Scottish Union and National Insurance Company (Talcott, III, 152).

83. **A. T. Tamblyn:** now is and has been president of the Lincoln Fire Insurance Company (Tamblyn, II, 299) which company took over the Chicago Fire and Marine and Presidential Fire and Marine Companies at the end of 1931 (Tamblyn, II, 300).

84. **Paul W. Terry,** St. Louis: now is and since October, 1919, has been manager of the Missouri Inspection Bureau (Terry, III, 372).

85. **John M. Thomas:** now is and in 1935 and 1936 was president of the National Union Fire Insurance Company (Thomas, II, 243).

86. **Oswald Tregaskis,** New York City: now is and in 1935 and 1936 was manager of the United States branch of The Sun Insurance Office and president of the Patriotic Insurance Company (Tregaskis, II, 16).

V.

87. **John R. Van Horne:** secretary of Globe & Rutgers Insurance Company. In 1935 and 1936 he was resident counsel of the company (Van Horne, I, 453, 455). He was in the office of the company in 1936 (Van Horne, I, 454).

88. **J. H. Vreeland:** United States manager of the Scottish Union and National Insurance Company since 1920, and president of the American Union since its organization which was prior to 1935 (Vreeland, II, 461-462).

W.

89. **Raymond Waldron,** Detroit, Michigan: has been vice-president of the Detroit Fire and Marine Insurance Company since 1935. So far as that company's activities were concerned the Missouri Fire rate litigation was under his jurisdiction (Waldron, I, 206). His sole connection with the group was with the Detroit Fire and Marine Insurance Company (Waldron, I, 211).

90. **Harold Warner,** Forest Hills, New York: now is and in 1935 and 1936 was United States manager of the Royal Insurance Company and of the Liverpool and London and Globe Insurance Company, and president of the Federal Union Insurance Company and the Star In-

surance Company and of the Newark and the Queen Insurance Companies (Warner, III, 351).

91. **H. F. Waterman:** now is and in 1935 and 1936 was secretary of the Agricultural Insurance Company (Waterman, II, 54).

92. **Robert C. Weigel:** in 1935 and 1936 was secretary and comptroller of the Rhode Island Insurance Company and of the Merchants Insurance Company of Providence (Weigel, III, 1).

93. **S. F. Weiser,** Dubuque, Iowa: now is and in 1935 was secretary of the Fire and Marine Insurance Company and of the National Reserve Insurance Company (Weiser, I, 213, 222). He is in active management of these companies (Weiser, I, 222).

94. **Henry P. Whitman:** vice-president of the Phoenix Insurance Company (Whitman, III, 127).

95. **Herman L. Wilkins:** was secretary-treasurer of Importers and Exporters Insurance Company in 1935 and 1936. He ended his connection with this company on April 30, 1937 (Wilkins, II, 100).

96. **Walter D. Williams,** Rockford, Illinois: is retired from active work, but was for many years vice-president (Williams, I, 70-71; Hobbs, I, 5), and manager of the western department of the Security Insurance Company of New Haven, and for the last three years was president of the company. He was in charge of the western department for both the companies and for its affiliated company known as the East and West. He retired May 1, 1939 (Williams, I, 71). He was a member of the Subscribers Actuarial Committee throughout the year 1935 and retired in 1937 (Williams, I, 71, 89).

97. **Henry J. Wyatt:** now is and in 1935 and 1936 was connected with a management group, namely, the Crum and Forster group (Wyatt, II, 162), and vice-president of "the companies" (Wyatt, II, 163).

II.

INSURANCE GROUPS.

A great many insurance companies are operated in groups, each company having the same or nearly the same officers and having the same office and employes. The group is usually known by the name of the oldest or largest company in the group.

COMPANY GROUPS.

Defendant's Exhibit 320 is a list of the various plaintiff companies in these 137 cases showing the number of each individual case and the companies grouped as to their various affiliations as the groups existed in 1935 and 1936 as was testified to by the various witnesses. It was agreed that except as otherwise specifically shown by the record the companies so grouped are under common management (III, 326-7). Said Defendant's Exhibit 320 (III, 327) is as follows:

"LIST OF PLAINTIFF COMPANIES SHOWING NUMBER OF EACH CASE AND GROUP AFFILIATIONS.

(1)	American Insurance Company	No. 270
	Columbia Fire Insurance Company	No. 296
(2)	Aetna Insurance Company	No. 273
	The World Fire and Marine Insurance Company	No. 422
(3)	Agricultural Insurance Company	No. 271
(4)	Atlas Assurance Company, Ltd.	No. 280
(5)	Automobile Insurance Company of Hartford	No. 281
	Standard Fire Insurance Company of Connecticut	No. 400
(6)	Bankers and Shippers Insurance Company	No. 282
	New Jersey Insurance Company	No. 364
	Pacific Fire Insurance Company	No. 377
(7)	Boston Insurance Company	No. 283
	Old Colony Insurance Company	No. 375

(8)	Caledonian Insurance Company	No. 286
(9)	Camden Fire Insurance Association	No. 289
(10)	Chicago Fire and Marine Insurance Company	No. 292
	Presidential Fire and Marine Insurance Company	No. 385
(11)	Commercial Union Assurance Company, Ltd.	No. 298
	American Central Insurance Company	No. 276
	California Insurance Company	No. 288
	Commercial Union Fire Insurance Company	No. 299
	Palatine Insurance Company, Ltd.	No. 378
	Union Assurance Society, Ltd.	No. 412
(12)	Continental Insurance Company	No. 303
	American Eagle Fire Insurance Company	No. 277
	Fidelity-Phenix Fire Insurance Company	No. 313
	First American Fire Insurance Company	No. 317
	Niagara Fire Insurance Company	No. 367
(13)	Dubuque Fire and Marine Insurance Company	No. 306
	National Reserve Insurance Company	No. 357
(14)	Eagle Star and British Dominions Insurance Company	No. 308
(15)	Fire Association of Philadelphia	No. 314
	Lumbermen's Insurance Company	No. 343
	Reliance Insurance Company of Philadelphia	No. 390
	Victory Insurance Company	No. 418
(16)	Fireman's Fund Insurance Company	No. 315
	Home Fire and Marine Insurance Company	No. 329
(17)	Firemen's Insurance Company	No. 316
	Concordia Fire Insurance Company	No. 301
	Girard Fire and Marine Insurance Company	No. 320
	Mechanics Insurance Company of Philadelphia	No. 346
	Milwaukee Mechanics Insurance Company	No. 352

	National Ben Franklin Fire Insurance Company	No. 354
	Superior Fire Insurance Company	No. 406
(18)	Glens Falls Insurance Company	No. 321
	Commerce Insurance Company	No. 297
(19)	Globe and Rutgers Fire Insurance Company	No. 322
(20)	Great American Insurance Company	No. 324
	American Alliance Insurance Company	No. 275
	County Fire Insurance Company	No. 304
	Detroit Fire and Marine Insurance Company	No. 305
	Massachusetts Fire and Marine Insurance Company	No. 345
(21)	Hanover Fire Insurance Company	No. 326
(22)	Hartford Fire Insurance Company	No. 327
	Citizens Insurance Company	No. 293
	New York Underwriters Insurance Company	No. 366
	Northwestern Fire and Marine Insurance Company	No. 372
	Twin City Fire Insurance Company	No. 411
(23)	The Home Insurance Company	No. 328
	City of New York Insurance Company	No. 294
	Franklin Fire Insurance Company	No. 318
	National Liberty Insurance Company of America	No. 356
(24)	Importers and Exporters Insurance Company	No. 332
(25)	Insurance Company of North America	No. 334
	The Alliance Insurance Company	No. 274
	National Security Fire Insurance Company	No. 358
	Philadelphia Fire and Marine Insurance Company	No. 381
(26)	Insurance Company of the State of Pennsylvania	No. 335

(27)	The London Assurance Corporation	No. 339
	Manhattan Fire and Marine Insurance Company	No. 344
	Union Fire Insurance Company	No. 413
(28)	London and Lancashire Insurance Company, Ltd.	No. 340
	The Law Union and Rock Insurance Company, Ltd.	No. 336
	Orient Insurance Company	No. 376
	Safeguard Insurance Company	No. 394
(29)	Merchants Fire Assurance Corporation of New York	No. 348
(30)	Merchants Fire Insurance Company	No. 349
(31)	National Fire Insurance Company of Hartford	No. 355
	Franklin National Insurance Company	No. 319
	Mechanics and Traders Insurance Company	No. 425
	Transcontinental Insurance Company	No. 409
(32)	National Union Fire Insurance Company	No. 359
(33)	New Hampshire Fire Insurance Company	No. 363
	Granite State Fire Insurance Company	No. 323
(34)	The Northern Assurance Company, Ltd.	No. 369
	London and Scottish Assurance Corporation, Ltd.	No. 342
(35)	Northern Insurance Company	No. 370
(36)	Norwich Union Fire Insurance Society, Ltd.	No. 374
	The Eagle Fire Company of New York	No. 307
(37)	Phoenix Assurance Company, Ltd.	No. 382
	Columbia Insurance Company	No. 295
	Imperial Assurance Company	No. 331
	United Firemen's Insurance Company	No. 414
(38)	Potomac Insurance Company	No. 426
(39)	Providence Washington Insurance Company	No. 386
(40)	The Phoenix Insurance Company	No. 383
	Connecticut Fire Insurance Company	No. 302

	Equitable Fire and Marine Insurance Company	No. 310
	Minneapolis Fire and Marine Insurance Company	No. 383
	Central States Fire Insurance Company	No. 383
(41)	Rhode Island Insurance Company	No. 391
	Guaranty Fire Insurance Company	No. 325
	Merchants Insurance Company	No. 347
(42)	Royal Exchange Assurance	No. 392
	Provident Fire Insurance Company	No. 387
	The State Assurance Company, Ltd.	No. 403
(43)	Royal Insurance Company, Ltd.	No. 393
	Federal Union Insurance Company	No. 312
	Liverpool and London and Globe Insurance Company, Ltd.	No. 338
	The Newark Fire Insurance Company	No. 361
	Queen Insurance Company of America	No. 389
	Star Insurance Company of America	No. 402
(44)	St. Paul Fire and Marine Insurance Company	No. 395
	Mercury Insurance Company	No. 350
(45)	Scottish Union and National Insurance Company	No. 396
	American Union Insurance Company	No. 279
(46)	Security Insurance Company of New Haven	No. 397
	East and West Insurance Company	No. 309
(47)	Springfield Fire and Marine Insurance Company	No. 399
	Michigan Fire and Marine Insurance Company	No. 351
	New England Fire Insurance Company	No. 362
	Sentinel Fire Insurance Company	No. 398
(48)	Stuyvesant Insurance Company	No. 404
(49)	Standard Fire Insurance Company of New Jersey	No. 401
(50)	Sun Insurance Office, Ltd.	No. 405
	Patriotic Insurance Company of America	No. 379

(51)	Svea Fire and Life Insurance Company	No. 407
	Hudson Insurance Company	No. 330
(52)	Tokio Marine and Fire Insurance Company, Ltd.	No. 408
(53)	The Travelers Fire Insurance Company	No. 410
(54)	Western Fire Insurance Company	No. 421
(55)	Yorkshire Insurance Company, Ltd.	No. 423
	London and Provincial Marine and General Insurance Company, Ltd.	No. 341
(56)	Crum and Forster	
	British America Assurance Company	No. 284
	North River Insurance Company	No. 371
	United States Fire Insurance Company	No. 415
	Westchester Fire Insurance Company	No. 419
	Western Assurance Company	No. 420
	United States Merchants and Shippers Insurance Company	No. 416
(57)	Underwriters Grain Association	
	(This is an impounding account solely.)"	

The evidence supports the grouping of Companies shown by Exhibit 320:-

Group 1. Sommers, II, 132. Group 2. McCain, III, 331. Group 3. Waterman, II, 54. Group 4. Martin (R. R.), II, 1. Group 5. Hooker, III, 130. Group 6. Bowden, II, 75. Group 7. Dominick, II, 490; Hedge, II, 517. Group 8. Clark (R. R.), II, 415. Group 9. Gilliams, III, 110. Group 10. Tamblyn, II, 299. Group 11. Koeckert, I, 495. Group 12. Henne, I, 57, 65; Moeckel, II, 305; Culver, III, 397. Group 13. Weiser, I, 213. Group 14, Casper, II, 106. Group 15. Powrie, I, 109; Lane, I, 363. Group 16. Buck, I, 231. Group 17. Clark (H. A.), I, 249; Cooney, III, 14. Group 18. Smalley, II, 37. Group 19. Van Horne, I, 453; Hubbard, II, 7. Group 20. Koop, I, 393; Waldron, I, 206. Group 21. Hubbard, II, 9. Group 22. Smith (C. H.), I, 334; Bissell, II, 442. Group 23. Kurth, I, 423. Group 24. Wilkins,

II, 100; Barry, II, 117. Group 25. Catlin, II, 271. Group 26. Remak, II, 220; Rodgers, II, 225. Group 27. Nourse, II, 122; Maasen, II, 343. Group 28. Claussen, I, 317; Kingan, III, 18. Group 29. Brady, I, 371. Group 30. Gardner, III, 297. Group 31. Bell, I, 137; Layton, III, 75. Group 32. Thomas, II, 243. Group 33. Smart, III, 115; Swallow, III, 126. Group 34. Barbour, I, 339. Group 35. Plessner, II, 145. Group 36. Darlington, II, 288. Group 37. Irvine, II, 200. Group 38. Dent, II, 264; Moore, I, 529. Group 39. Cashel, I, 315; Luce, II, 519. Group 40. Long, III, 84; Whitman, III, 128. Group 41. Weigel, III, 1. Group 42. Koenig, II, 68; Elwell, III, 415. Group 43. Cartlidge, I, 462; Warner, III, 351. Group 44. McKown, I, 166; Dosdall, I, 168. Group 45. Vreeland, II, 462; Talcott, III, 152. Group 46. Williams, I, 71. Group 47. Harding, I, 279; Schlesinger, II, 529. Group 48. Siedel, II, 28. Group 49. Breen, I, 383. Group 50. Tregaskis, II, 16. Group 51. Allen, II, 153. Group 52. Kline, II, 184; Baker, II, 218. Group 53. Ewing, III, 26; Safford, III, 43. Group 54. Duboc, III, 255. Group 55. Martin (F. B.), II, 190. Group 56. Wyatt, II, 162; Parsons, III, 318. Group 57. Lerch, I, 306.

III.

CO-OPERATIVE ACTIVITIES.

THE NATIONAL BOARD AND LOCAL BOARDS.

The National Board is the National Board of Fire Underwriters. The Local Boards are those to which the companies have to contribute for organization purposes to keep their organization going (Koeckert, I, 505). The National Board has, as part of its service, a very extensive legal department (Koeckert, I, 503).

INSURANCE EXECUTIVES ASSOCIATION.

This association was organized on May 1, 1932 (Erskine, II, 359; Haid, II, 373), and still continues. Its offices are in New York where the New York hearing in this proceeding was held. Its only executives are Mr. Haid and Mr. Erskine. Its other employes are secretarial and stenographic. That was the situation in 1935 (Erskine, II, 359). No prior organization performed substantially the same functions (Haid, II, 374) after it was formed it opened offices and started to work with Mr. Haid and Mr. Erskine as its salaried executives (Haid, II, 374).

Mr. Haid, the president (see witnesses), is the employe of insurance executives. Under his agreement of employment in 1932, he was requested to sell the stock that he had in any insurance company and to not thereafter be a stockholder in any insurance company so long as he held his position, which he did. He is not, and since 1932 has not been, a director or an officer in any fire insurance company, and has not been an agent for any fire insurance company, except as might be inferred from his being president of this association (Haid, II, 406).

This association is a convenient vehicle for looking after those things where the insurance companies have a common interest. A good many of the activities of the association are and have been carried out through the organizations which are set up especially for some particular jurisdiction, but these are sometimes confined to a particular territory and sometimes to a particular branch of activity; whereas, the executives have to be interested in all of the activities in all of the territory. That resulted

in, or at least it had something to do with, the formation of this association (Erskine, II, 357-358).

This association is used as a sort of working forum in which matters of general interest to the stock fire insurance business may be considered by its members. It is a sort of clearing house of information in matters of that kind, and of trouble. It aids in developing policies on things that affect the various insurance companies in common. It has a board of trustees (who rotate) of fifteen members (Haid, II, 374).

Defendant's Exhibit 207 (Haid, II, 407) is a list of the trustees of the Insurance Executives' Association for the year 1935. It shows that such trustees were as follows:

C. W. Bailey
R. P. Barbour
R. M. Bissell
W. H. Koop
Wilfred Kurth
O. E. Lane
F. D. Layton
W. Ross McCain
Edward Milligan
Victor Roth
Benjamin Rush
C. F. Shallcross
Earnest Sturm
Harold Warner
E. W. West

Defendant's Exhibit 208 (Haid, II, 407-408) shows the trustees of the association for the year 1936. It shows that the executives were the same as in 1935, except that John M. Thomas had succeeded E. W. West.

In order to be a member of this association a man has to be a chief executive with a rank of president, or vice president of an American company or with the title of United States manager or United States assistant manager of a foreign company, due to the fact that so far as a foreign company is concerned, the United States manager is the chief officer in America. The companies with which these men are connected must be affiliated with the major regional organizations of the country, namely: The Western Underwriters' Association, the Eastern Underwriters' Association, the Southeastern Underwriters' Association, the Board of Fire Underwriters of the Pacific and the National Automobile Underwriters' Association. They have to be what they deem "organization companies" (Erskine II, 355-356.

The purposes of the organization are set forth in the first paragraph of its articles of association (Defendant's Exhibit 204, II, 360). They are as follows:

"(a) To maintain among its members a spirit of loyalty to obligations, to establish the practice of fair dealing and the observance of ethical principles in competition with one another, and to support all territorial and special organizations which shall be listed by the board of trustees and of which companies represented in the organization are or shall become members,

"(b) to bring about improvements, reforms, and economies in the methods and practice of conducting the business of fire insurance and its allied lines, so that the methods for making rates may be simpler and more economical; that rates may be better adapted to the needs of various localities, classes of business and individual owners; that forms of coverage better suited to the changing conditions of business and manufacture may be devised; and in general that the operations of companies may be more efficiently conducted and better service rendered to the insuring public, and

"(c) to promote the interests of stock insurance companies" (Defendant's Exhibit 204, II, 360; Erskine, II, 356-357). Mr. Erskine believes that this association has never done anything contrary or in opposition to those limitations upon its powers (Erskine, II, 371).

The membership of the association at present consists of 38 executives (Haid, II, 374; Erskine, II, 371) who represent more than one hundred companies (Haid, II, 374). Witness does not know how many companies they represent, but he would judge around 125. Companies in addition to these 125 were in the Missouri litigation. A great majority of the 137 companies involved in the federal court litigation were represented by executives in this association (Erskine, II, 371-372).

Defendant's Exhibit 209 (II, 408-409) is a list of companies that were plaintiffs in the Missouri rate cases in the federal court which were not affiliated with the Insurance Executives Association. They are the following.

"COMPANIES IN THE MISSOURI RATE CASE IN THE FEDERAL COURT NOT AFFILIATED WITH THE INSURANCE EXECUTIVES ASSOCIATION.

British America Assurance Company
Bankers & Shippers Insurance Company
Camden Fire Insurance Association
Chicago Fire & Marine Insurance Co.

Concordia Fire Insurance Co. of Milwaukee
Dubuque Fire & Marine Insurance Co.
Firemen's Insurance Company
Girard Fire & Marine Insurance Co.
Globe & Rutgers Fire Insurance Company
Hudson Insurance Company
Importers & Exporters Insurance Company
The Law, Union & Rock Insurance Co., Ltd.
London & Lancashire Insurance Co., Ltd.
Mechanics Insurance Co. of Philadelphia
Merchants Fire Assurance Corporation of New York
Merchants Fire Insurance Company, Denver
Milwaukee Mechanics Insurance Company
National Ben Franklin Fire Insurance Co.
National Reserve Insurance Company
New Jersey Insurance Company
Northern Insurance Company
North River Insurance Company
Orient Insurance Company
Pacific Fire Insurance Company
Patriotic Insurance Company of America
Presidential Fire and Marine Insurance Company
Safeguard Insurance Company
Standard Fire Insurance Company of New Jersey
Stuyvesant Insurance Company
Sun Insurance Office, Ltd.
Superior Fire Insurance Company
Tokio Marine and Fire Insurance Co., Ltd.
Transcontinental Insurance Company
United States Fire Insurance Co.
United States Merchants and Shippers Insurance Co.
Westchester Fire Insurance Company
Western Assurance Company
Potomac Insurance Co. of the District of Columbia
Svea Fire and Life Insurance Company"

The Insurance Executives Association and its paid officers represented those executives who could have taken charge of the litigation if they had desired to do so, or had thought there was any reason to do so, but witness would say that the officers and employees of

the Insurance Executives Association did not attempt to keep track of what was going on in Missouri with the rate litigation. He does not think that any particular consideration was given to the Missouri situation. The Executives Association did not receive the direct reports as to what was going on. If any report came, it was the same kind of a report that might have been sent or submitted to each of the companies. The Insurance Executives Association did not request any such report. Witness, the secretary of the association, paid no attention to the litigation, and he does not believe that the president of that association did (Erskine, II, 358).

The association does not have any control over any insurance business in any way at all. It does not actually transact any insurance business whatever. The only control that it has over any operation of the insurance business is suggestions to the so-called regional organization. They do a lot of talking and hope they can help each other (Culver, III, 413).

This association did not have anything to do with the direction of the Missouri rate litigation down to the spring of 1935 (Haid, II, 375; Erskine, II, 347). It had no management or control whatever over that litigation (Culver, III, 413).

It has nothing to do with rates or litigation anywhere in the United States. It has never done anything in connection with rates or rate making or raising or lowering rates or looking after lawsuits for any companies. Its activities do not embrace those things. It uses the long distance telephone extensively (Erskine, II, 354-355).

Until 1936 witness had had no communication from Mr. Haid, or ever heard of him having anything to do with the Missouri litigation (Luce, II, 523). Mr. Haid was not a member of the Actuarial Committee, and witness thinks he was not connected in any way with his company's litigation or suits (Smart, III, 120). Mr. Charles R. Street was not a member of this association, but Mr. Koop, the president of his companies, was a member (Haid, II, 374). The association's connection with the Subscribers Actuarial Committee is that, in a general way, this association has contacts with all the various regional and rating organizations, including the Western Actuarial Bureau (Haid, II, 375).

WESTERN INSURANCE BUREAU.

This is an organization, composed of about thirty companies, for the purpose of cooperating in good underwiting practices, dealing with agents (Clark, I, 278; Weiser, I, 214). Mr. Clark's companies and the Dubuque were the only companies in this litigation that were members of this bureau (Clark, I, 278; Weiser, I, 214).

WESTERN UNDERWRITERS ASSOCIATION.

This is a large organization which represents most of the companies. These two last named associations conform in their agency contracts, with some difference with respect to commissions (Clark, I, 278). The Western Underwriters Association is not a rating bureau. It has nothing whatever to do with rating matters (Henne, I, 60).

The Governing Committee is the executive committee of the Western Underwriters Association. It is the executive committee or the board of directors of the Western Underwriters Association, which is a trade association in the sense that "a Bankers Association or The Bar Association may be a voluntary organization of individual insurance companies," to exchange views and pool their common efforts on matters that affect stock fire insurance companies in general (Henne, I, 60).

MISSOURI INSPECTION BUREAU.

The Missouri Inspection Bureau is Paul W. Terry, doing business as the Missouri Inspection Bureau. It is unincorporated. The purpose of the bureau is maintaining fire insurance rates, filing of schedules for various companies as an actuarial bureau under the Missouri Rating Act. It prepares and files general basis schedules, including basic charges, charges, credits, terms, conditions and riders, and permits for the doing of fire and tornado insurance business in the State of Missouri. For its compensation it makes assessments on the members of the bureau. It has a more or less set overhead expense for the ordinary routine. Every company is assessed on the basis of its premiums written in Missouri and that was the situation in 1935 and 1936. The bureau has been under Mr. Terry's direction since October, 1919 (Terry, III, 372-373). A few witnesses mentioned that their companies were members of or subscribers to this bureau (Duboc, III, 255; Gardner, III, 297; Bowden, II, 92).

This bureau makes a general assessment every year which includes excess expenses over the regular bureau expenses (Terry, III, 384).

SUBSCRIBERS ACTUARIAL COMMITTEE.

1.

Organization, Functions, Meetings, Officers and Members.

The committee was originally formed in 1915 for the purpose of working out the details of the method of writing insurance for more than one (1) year at rates reduced from the annual rates (Hobbs, I, 6). The duties and obligations of the Committee are not governed by any Constitution, by-laws or rules, but with the passage of time it has been given more work because it represents all interests (Hobbs, I, 7). By common consent the matter of term rates and fire insurance rates was delegated through the bureau to this Actuarial Committee (Hobbs, I, 7). It held meetings regarding this case during the pendency of the rate suits and the Secretary kept a record thereof, largely for his guidance as to what transpired and what needed to be done, so far as he was concerned, he being the man who handled the details of the work (Hobbs, I, 7). This committee always meets in Chicago. Witness has never known of a meeting elsewhere, except, perhaps, in White Sulphur sometimes in the spring or the fall (Koeckert, I, 516). The individual state committees of managing underwriters for each state to whom the bureaus looked for advice were abandoned, and the Subscribers Committee was given the task, in addition to the term rule, of supervising the activities of the bureaus with particular reference to their administrative and financial problems. There was a feeling that by so doing the entire operations in which the companies had a common interest could be more economically handled. As that work developed, the Committee, being the only one representing the common interests of all companies subscribing to these bureaus, all problems relating to those bureaus were referred to the Committee (Hobbs, I, 6).

J. V. Parker, now dead (Hobbs, I, 3), was Secretary (Terry, III, 380; Hobbs, I, 3; Folonie, III, 186) and was versed in rate making (Folonie, III, 186). He was Mr. Hobb's predecessor (Hobbs, I, 3; Folonie, III, 186). Mr. Parker was also manager of the Western Actuarial

Bureau, and was consulting actuary to Mr. Terry of the Missouri Inspection Bureau (Terry, III, 380). Mr. C. R. Street was Chairman (Hobbs, I, 4) of the Subscribers' Actuarial Committee (Hobbs, I, 4). The committee is elected at the semi-annual meeting of the Subscribers to the rating bureau. These subscribers voluntarily subscribe to the bureau for their own purposes and are Fire Insurance Companies, except that there are some casualty companies belonging to the bureau because of the statutory requirements relating to automobile business (Hobbs, I, 5). The committee is composed of men representing all of the different organizations that support the movement (Duboc, III, 283-4).

In the first half of 1935 (Hobbs, I, 4) the Actuarial Committee was composed of the following executives of the following groups of companies (Hobbs, I, 5) (See Defendants' Exhibit 320, "II, Insurance Groups" and "I, Witnesses").

COMPANIES	EXECUTIVE
Group 11	
1. Commercial Union Assurance Company, Ltd. 2. American Central Insurance Company 3. California Insurance Company 4. Commercial Union Fire Insurance Company 5. Palatine Insurance Company, Ltd. 6. Union Assurance Society, Ltd.	F. W. Koeckert, United States manager of the Commercial Union Assurance Company, Ltd., the Palatine Insurance Company, Ltd., and the Union Assurance Company; president of the Commercial Fire Insurance Company and the American Central Insurance Company, and manager of the California Insurance Company.
Group 12	
1. Continental Insurance Company 2. American Eagle Fire Insurance Company 3. Fidelity-Phenix Fire Insurance Company	E. A. Henne, Vice-President and manager of Western department.

COMPANIES	EXECUTIVE
4. First American Fire Insurance Company 5. Niagara Fire Insurance Company	
Group 17	
1. Firemen's Insurance Company 2. Concordia Fire Insurance Company 3. Girard Fire and Marine Insurance Company 4. Mechanics Insurance Company of Philadelphia 5. Milwaukee Mechanic's Insurance Company 6. National Ben Franklin Fire Insurance Company 7. Superior Fire Insurance Company	Herbert A. Clark, Vice-president and manager of Western department.
Group 31	
1. National Fire Insurance Company of Hartford 2. Franklin National Insurance Company 3. Mechanic's and Traders Insurance Company 4. Transcontinental Insurance Company	George H. Bell, manager of the Western department.
Group 46	
1. Security Insurance Company of New Haven 2. East and West Insurance Company	Walter D. Williams, Vice-president and manager of the Western department.
Group 47	
1. Springfield Fire and Marine Insurance Company 2. Michigan Fire and Marine Insurance Company	John C. Harding, Vice-president and manager of Western department.

COMPANIES	EXECUTIVE
3. New England Fire and Marine Insurance Company 4. Sentinel Fire Insurance Company	
Group 20	
1. Great American Insurance Company 2. American Alliance Insurance Company 3. County Fire Insurance Company 4. Detroit Fire and Marine Insurance Company 5. Massachusetts Fire and Marine Insurance Company	Charles R. Street, Vice-president and manager for the Western department except that he was not manager of the separate Western department of the Detroit Fire and Marine Insurance Company (See "IV, Charles R. Street").

Mr. H. A. Clark was a member of this committee (Weiser, I, 216; Cooney, III, 17). He was the Western Insurance Bureau member of the committee (Weiser, I, 216).

Mr. Williams attended the meetings of the Subscribers Actuarial Committee very infrequently after he commenced commuting between Rockford and New Haven every other week, and finally he resigned because he could not attend (Williams, I, 91). Mr. Koeckert met with the committee as often as he could. He did not attend all of the meetings (Koeckert, II, 517).

Neither Mr. Street nor any member of the Subscribers Actuarial Committee was a lawyer to witness's knowledge (Weiser, I, 227).

This committee acts only in an advisory capacity (Henne, I, 23). It handled many other matters for the companies besides the Missouri litigation (Luce, II, 522).

2.

Management of Rate Litigation.

This committee had charge of this litigation (Hobbs, I, 7) for all the companies involved; so the activities of the committee were for all the companies (Clark, I, 250). It was placed in charge of this litigation at the time that

the litigation developed (Henne, I, 20). It was handling the Missouri Impounded Premium case (Weiser, I, 216).

So far as known to the president of the Insurance Executives Association, the Subscribers Actuarial Committee directed the Missouri litigation from the time of its inception (Haid, II, 375).

As Mr. Bissell understands and recalls, the suit was originally authorized by the chief executives of the company. It was a very important matter (Bissell, II, 454).

This litigation goes back a long way. Mr. Williams thinks that the genesis of the litigation antedates his membership on the committee, which began along in 1923, 1924 or 1925, and continued until December, 1937 (Williams, I, 71). He would say, in a very general sort of a way, that this Actuarial Committee had charge of the litigation as it has charge of all matters of common interest, such as litigation (Williams, I, 72).

When Mr. Harding came on the Actuarial Committee in 1926, the Missouri rate litigation was pending. Thereafter, the committee directed that litigation through the attorneys (Harding, I, 280).

Mr. Bell first said that this committee was handling this litigation for the companies (Bell, I, 137). Later he said that he never had any telegrams or telephone calls or letters from the executives of any other company regarding the bringing of those suits or the authority to bring them or the authority to settle them. He never had any personal, telegraphic, telephonic or written correspondence with the executives of his own company about bringing those suits in Missouri or about the settlement of them until after it was over (Bell, I, 163).

Neither Mr. Harding nor any member of the committee, so far as he knows, either by writing, telegraph, telephone or personal communication, ever at any time got word from any insurance company whatever, authorizing or telling them that they could bind them in this litigation or the settling of it (Harding, I, 299).

When the Subscribers Actuarial Bureau undertook to handle the litigation, that was purely a self-appointed and voluntary action on the part of the committee. Neither witness's company nor his group of companies nor any other companies so far as he knows, ever by telephone, telegraph, letter, or personal verbal request, ever asked the Actuarial Bureau to handle this litigation (H. Clark, I, 279).

3.

Employment of Attorneys.

The attorneys for the companies were the firm of Hicks and Folonie (Warner, III, 351; Henne, I, 21; Williams, I, 72; Terry, III, 374), and Mr. Homer Berger was the Kansas City Counsel (Williams, I, 72) or the Kansas City firm of Morrison, Nugent, Wilder & Berger (Henne, I, 21). The Committee engaged counsel for all of the companies engaged in that litigation (Hobbs, I, 7); namely, R. J. Folonie and Mr. Homer Berger or Mr. Morrison, or both (Hobbs, I, 15).

Mr. Folonie employed the firm of Morrison, Nugent, Wylder & Berger with Mr. Street's consent (Folonie, III, 160).

When the suits were started, Mr. Folonie employed local or assistant counsel in Missouri. He first employed Morrison, Nugent, Wylder & Berger of Kansas City (Folonie, III, 159). Mr. Folonie went to Kansas City and made investigations and recommended the employment of this firm. He secured the approval of the chairman and, presumably, the committee, to employ them (Folonie, III, 160).

Thereafter additional counsel were employed from time to time. Subsequently Honorable W. T. Ragland of Jefferson City and Igoe, Carroll, Higgs & Keefe were employed. Their employment was suggested by Mr. Street. So far as Mr. Folonie knows, they were intimate friends of Mr. McCormack, a St. Louis agent who recommended the firm and stated that they would be highly helpful, both because of their political connections and because they had been friends of Mr. McCormack, who was and had been president of the State Agents Association. He believed it would be highly desirable from the agents' standpoint if they were employed (Folonie, III, 160-161).

Witness did not investigate the fitness of the St. Louis firm, except perhaps to look in a directory or something of that kind. He thinks he personally interviewed them at the time he employed them. It is mostly an impression, but Mr. Folonie believes they had been contacted with reference to employment before he contacted them. Mr. Street said they were very intimate friends of Mr. McCormack, and that the latter wanted them employed (Folonie, III, 161). The suit had been

in progress for some time, as Mr. Folonie recalls, before either Judge Ragland or the St. Louis firm was employed. They were employed some years prior to the compromise agreement and prior to any negotiations resulting in the compromise which was signed in May, 1935 (Folonie, III, 161). In later years possibly some more attorneys came into the picture (Williams, I, 72). When Mr. Henne came into the picture in 1932 the attorneys had been employed (Henne, I, 21).

So far as Mr. Hobbs knows the employment of the lawyers to represent the companies was verbal. Mr. Folonie had represented the companies and witness thinks his practice was very largely with the fire insurance companies for a number of years. In questions of this kind it is customary to discuss the problems and tell Mr. Folonie, or whoever the attorney may be, to handle the situation (Hobbs, I, 19). Mr. Folonie was employed in these 137 federal cases through the same source and by the same people. The federal cases may be considered as one unit through one employment (Folonie, III, 159). Mr. Henne could not give a direct answer to the question as to whether the Subscribers Actuarial Committee hired Hicks and Folonie and Mr. Berger in the 137 suits in Missouri except this way: Hicks and Folonie are the retaining counsel of the Subscribers Actuarial Committee, or of the group of companies known as the Western Underwriters Association. They are counsel for a number of their activities. The association would quite naturally refer this case to Mr. Folonie and tell him to go ahead with it. Witness does not know who told Hicks and Folonie and Mr. Berger to bring these suits in the names of the 137 companies. He does not recall that this was ever officially before the committee for action. He would have to refer to the records for that. He thinks the Missouri Inspection Bureau sent out a general letter that this litigation was started. He doesn't recall its substance, but is sure that would be the formal procedure (Henne, I, 69-70).

COOPERATION THROUGH COMMITTEES.

The smaller companies do a great deal of following and very little leading (Casper, II, 116). An executive of the Phoenix Assurance Company was asked whether, when he looked back, he wondered why he treated the whole thing (the insurance rate settlement) so nonchalantly. He answered, "Yes and no"; that it is perhaps a

peculiarity of their business that they frequently have cases in litigation or loss cases where a number of companies are interested, and usually one company is active in the conduct of the case. It is usually the one that has the biggest policy, and they rely upon it (Irvine, II, 214-215). An executive of the National Union Company said that, knowing Mr. Street as he knew him, it did not occur to him as at all unusual that Street did not state what his arrangement was (concerning collection of funds). The litigation had been running on since 1922, and the present suit originated about 1929 or 1930. It had become very involved and if a man attempted to keep track of all those things he would not have any time to attend to his daily duties. In his business they were accustomed to leaving joint action to a committee. This must necessarily be so. He thinks that the average person, not in this business, fails to realize what a large proportion of the insurance business is transacted on good faith. It is not anything unusual when a matter, requiring joint action by a lot of companies, comes up, to place it in the hands of a committee and forget it, knowing that ultimately you will get a correct account of any contribution you may be called upon to make. That is an ordinary business transaction. They do not think anything of it. Of necessity the rate litigation had to be delivered to a committee. He would do whatever the committee asked him to do. They are accustomed in their business, on a complicated matter, to have a committee handle it. They turn it over to a committee and forget it (Thomas, II, 251-253). They assumed then and still assume that when a committee representing one hundred thirty odd companies is involved in litigation where no individual can ever hope to keep track of it, they will do just what the committee requests (Thomas, II, 263).

The companies have in their organization a number of companies, 135, in some organizations 200. It is just like the Congress of the United States, which is so large that the main body cannot carry on the necessary functions; so they appoint committees like the Ways and Means Committee in Congress and the Rivers and Harbors Committee. When those committees go into the details of a proposition and come back after a complete study of it and recommend it to the main body, in nine cases out of 10 that is adopted the same way. The insurance organization is run in the same way. They have a committee (as the Subscribers Actuarial Committee) which is

charged with handling that litigation. They are in close touch with it all the time. As president of his group of companies witness does not pretend to keep up with the details of that at all. They leave that to "them" (the committee). When that committee reports to them, and a man of the standing of Mr. Street, who for thirty-five or forty years had represented a company successfully, and they think fairly and honorably in the West, makes a recommendation to them it would not have made any special difference whether he had asked for $5,000.00 or $15,000.00. They would have given it to him without question (McCain, III, 338).

An executive of the Phoenix Assurance Company said that the real explanation why he gave very, very little attention to the matter is, he was following the leader. He was assuming somebody else was checking up and somebody else was watching it to see that everything was straight and all right. If he had had a big loss and there had been a dozen, fifteen or twenty policies, but he had a much bigger policy than anyone else, he surely would have taken charge of the whole thing, and then he would have treated everybody *pro rata,* and they would kind of looked to him. But if he had had a little policy and some other had had a great big loss on fire, the chances are he would have followed the leader and assumed they would have made a settlement if possible.

Their practice in matters of this kind is "what is so and so doing?" As an outsider looking in, he can see that the matter calls for some kind of an explanation. It is the practice in the business. Very seldom that witness' company or any other company is interested alone in litigation, they are not solely interested. There is always a number of companies interested. There always has to be somebody to take the responsibility to see that the thing doesn't go haywire. It is true that everybody cannot rely upon somebody else. If it so happened that witness' companies had the principal interest, the largest amount at stake, witness' company would probably carry on the case. They would either be checking it very closely or would be satisfied that somebody else was checking it closely, on whose judgment they would be content to rely but the chances are they would be doing it themselves. In this particular case they felt they were following the leader and somebody else was looking after it, because they always felt that their interest, as compared with some other companies, was quite small (Irvine, II, 216-218.

It is generally conceded that in the insurance business it is impossible for stock fire insurance companies to operate entirely independently of each other. They can compete for the business, but even though they do so they have a common interest in rates and in regulations of various incidents. They have a common interest in the adjustment of losses on account of the fact that large risks are usually covered by a number of different companies. It is either placed with a number of different companies to begin with, or if the whole risk is placed with one company, it is likely to be reinsured to keep the risk spread. Regardless of the fact that the business is competitive, the companies have many things in common. It is witness' understanding that the Missouri rate litigation was really delegated to a committee of five out of Chicago. Witness presumes that the chief officers of the fire insurance companies who brought the suits, if they desired, could withdraw that control from that committee (Erskine, II, 357-358).

When a committee that has charge of a matter in which a lot of companies have a common interest, and are looking after it in any way, and they send in a request for a contribution for expenses, they pay it and just rely on the committee as making the proper request (Smart, III, 126).

An executive of the Merchants Fire Insurance Company who had sent a check to Mr. Street for expenses, without knowing the expenses were not paid by the trustees, was asked why he paid the money. He said that, thinking back on his own reactions at the time, he would say it was more a matter of psychology than of any definite information. That psychology was built up by the fact that the insurance business, since he has been in it, probably depends on confidence and faith more than anything else. It has been customary, ever since he has been in the insurance business, to delegate questions where several companies are involved to a committee or to an individual and follow what they do, particularly, say, in loss adjustments, the handling of delinquent agencies, and other things which come up. It has been built up over a long period of years, and is done constantly. Witness' own thought and reaction was possibly due simply to confidence in that manner of doing business and the fact that they are in a very, very detailed business and cannot investigate everything. They have to delegate matters to other people. In the case of this committee, they had handled the thing for years, and witness

had great confidence in Mr. Street and his ability. That is about where his reasoning on the thing stopped (Gardner, III, 311).

If the Stuyvesant Insurance Company turns any litigation over to a committee, it follows that committee without argument (Siedel, II, 32). It has never withdrawn from any committee (Siedel, II, 4).

So many things are handled by committees. There may be a loss and maybe twenty-five companies involved. Not every company would have its own representatives. they have so many. There are committees, national board; all that kind of things. Witness is not in the underwriting end. He is in the financial end of it and he just sees the book end. They have requests for expenses, either in full or very frequently partial expenses on things of that kind that are going through being settled in committees, and in this case it struck witness that this was one of those things that would probably "be further, * * *."

An executive of the Royal Insurance Company stated that he absolutely considered the Missouri rate litigation entirely out of his hands; that whatever its technical position might be with the individual companies, when it came to this group effort, this kind of combined effort of 137 companies, the actual authority had to be vested someplace else (Warner, III, 371).

There are so many things handled by committees, national board, and there are other boards and things of that kind all over. They meet, they may take action on rates, maybe losses, claims maybe, on various things of that kind. There are so many companies on those things they have to have committees. There is perhaps a board, we will say New England Insurance Exchange Association. There is a committee to act on certain matters that come up. One of witness's companies—perhaps one of another New York company or something of that kind—business where many companies are involved instead of one. They do not duplicate each other's work. It has been done for years. They try to save expenses on that. That sort of thing is very common. For forty years that

witness has been in the insurance business there have been committee matters and committee matters (C. P. Smith, III, 37-38).

Where a number of fire insurance companies have a common interest in some transaction they will appoint a small committee to handle it on behalf of all the companies interested. When you have a committee handle something for a large number of companies in which you are, as one of the companies, interested, you accept something from that committee without investigating it because you know that in the end they will give you a full accounting of everything that is done (C. P. Smith, III, 39).

IV.

CHARLES R. STREET.

Mr. Street lived in Chicago (Vreeland, II, 463; Koop, I, 394). He was chairman of the Subscribers Actuarial Committee (Dosdall, I, 169; Weigel, III, 12; Bell, I, 137; Weiser, I, 226; McCain, III, 332; McKown, I, 166; Brady, I, 372; Lerch, I, 309; Kurth, I, 437; Vreeland, II, 463; Clark, II, 416; Folonie, III, 160; Casper, II, 873) and vice-president of the Great American (Clark, II, 416; Waldron, I, 211; Hobbs, I, 5; Brady, I, 372) and vice-president of all of the companies in the Great American group (Waldron, I, 211; Koop, I, 394-395), and Western manager of the Great American (Clark, II, 416) and all of the companies belonging to that group, except the Detroit Fire and Marine and the American National Insurance Companies. But he was regarded as the dominating factor in the Western territory and the other officers would follow his directions (Koop, I, 394-395).

The Companies of which he was vice-president were:

1. The Great American Insurance Company,
2. The American Alliance Insurance Company,
3. The County Fire Insurance Company,
4. The Detroit Fire and Marine Insurance Company,
5. The Massachusetts Fire and Marine Insurance Company,
6. The Rochester American Insurance Company, (Koop, I, 394-395).

He represented all of the Companies in the group in the Missouri rate litigation (Koop, I, 395).

Mr. Street conducted the negotiations in regard to the compromise (Clark, I, 250). He was known to be in charge of the Missouri rate litigation on behalf of the Subscriber's Committee. Everyone recognized that and was glad to have him attend to it (Kurth, I, 425). This litigation had gone over the term of three presidents of the Home Insurance Company before Mr. Kurth. Mr. Street was known to be in charge of the Missouri rate litigation on behalf of the Subscribers Committee in Chicago. Everyone recognized that he was in charge of

it and was glad to have him attend to it, because it was getting on a lot of people's nerves, the length of time it had been going on (Kurth, I, 424-425). He was the member of the committee that did most of the work and most of the supervision of the litigation (Hobbs, I, 16). He handled the whole thing (Culver, III, 415).

The Subscribers Actuarial Committee certainly did give Mr. Street sole authority to negotiate a compromise settlement of the litigation, and it put no restrictions on his authority to witness' recollection (Bell, I, 138). When Street suggested a course of action, he being the key man in the Missouri litigation, his requests were acted upon (Kurth, I, 438).

A member of the Subscribers Committee, in reply to an inquiry whether Mr. Street was in closer connection with the litigation than the other members, replied "He was not only in close connection, he was the sole connection" (Harding, I, 280). The Subscribers Committee handled the whole transaction, that is, Street did (Safford, III, 67).

Mr. Street's character and personality made him an outstanding man (Nourse, II, 123). He occupied a most unusual position in the business (Bell, I, 158). Probably there was not another character like him in the business (Koeckert, I, 523). Witness always admired him (Moore, I, 540). Witness has been in the business 50 years, and to his knowledge, there has never in the history of the business been a man that occupied the same position that Mr. Street did (Bell, I, 158).

Witness only met Mr. Street once or twice, but by reputation witness thought he was a splendid, reputable fellow and that witness' companies were in good hands (Tamblyn, II, 303). In 1935 and 1936 Mr. Street was apparently held in high regard for honesty, integrity and character by the high executives of the companies involved in the federal litigation and by the fire insurance fraternity generally (Folonie, III, 220). There was no reason in the world to question his word. His reputation was very good, highly satisfactory (Weigel, III, 12). Witness regarded him as a strictly honorable and honest man (Lerch, I, 313). He was looked upon as one of the most honorable, capable men that was ever in the fire insurance business in this country (Bell, I, 158). No one stood higher in respect, integrity, ability, honorable practices and willingness to work (Layton, III, 83). Witness had known Mr. Street for thirty or thirty-five years and

had never known him to do anything dishonest or dishonorable, and Mr. Street's reputation bore out this opinion (Lerch, I, 314). Witness thinks that, until these developments came out about Mr. O'Malley, Mr. Street had, for thirty or forty years, stood in the estimation of the fire insurance companies and their executive officials generally, without exception, in the highest regard as a man of character, integrity, ability and great experience in the fire insurance business; although there is, perhaps, a number of people who did not like him personally because he was a hard-boiled individual. He certainly did possess witness' absolute confidence so far as integrity, character and honesty were concerned. Witness believes that he had the same of the entire fire insurance fraternity (Safford, III, 73). Witness had implicit confidence in him (Moore, I, 540). They all had confidence in him (Dosdall, I, 187, 195). They had every confidence in him (Kurth, I, 425). He had witness' unbounded, absolute, unconditional confidence in all things. Witness thinks he knew Mr. Street about twenty years, up until the time he died. He absolutely had full confidence in Mr. Street (Culver, III, 402). Witness held him in the greatest esteem (Koeckert, I, 522). He was very prominent in the Western Underwriters (Remak, II, 221). The Actuarial Committee permitted Mr. Street to handle matters, only making formal reports to the committee, because they had the utmost confidence in him, and because one man can do a better job in negotiations and they thought Mr. Street was the man best qualified for the job. It was well handled and witness was satisfied to leave it (Harding, I, 280-281).

Mr. Street felt that he knew more about certain things than anyone else; that he knew more about the Western business than anybody in the organization (Koop, I, 406). Whenever anything was discussed in relation to Missouri, he was the one who always discussed it (Nourse, II, 123). He was a man who had a pretty fair opinion of himself (Bissell, II, 445). He thought fairly well of himself (McCain, III, 333).

It was his habit to grasp power (Bell, I, 158). Mr. Williams would say that Mr. Street was negotiating the settlement of this litigation as chairman of the committee. In answer to the question, how it got out of the committee's hands and into Mr. Street's hands, he said he could not answer that question; that if you know Mr. Street the question would answer itself. Mr. Street

was an individualist. The committee did not surrender anything, but Mr. Street was a man that did not consult people; he just went ahead and did things (Williams, I, 73).

He was the sort of man who, if you appointed him chairman of a committee, he was the committee (Nourse, II, 123; Bissell, II, 445; Koeckert, I, 523). He was the Actuarial Committee (Safford, III, 67). He had a yen for that sort of thing (Harding, I, 280). Witness absolutely knew that if Mr. Street was chairman of the Actuarial Committee and the litigation was turned over to that committee, Mr. Street would take charge of it (Nourse, II, 123). He had a disposition in the committee to kind of take things in his own hands and run them his own way, and anybody that opposed him came out second best (Bell, I, 158).

He was a man of few words (Warner, III, 354) he did not very well brook cross-examination about what he was doing (Koeckert, I, 522). He did not like to be asked things, nor want to tell them; he would not tell them (Koeckert, I, 522). He was not inclined to give any information or make any explanation of anything (Lerch, I, 313). He was a man that because of his high standing in the business, because of his temperament and personality, was not inclined to divulge his plans in detail (Layton, III, 77). He did not report to the Actuarial Committee; he went through the form of doing so, but it was very "formy" (Harding, I, 280). One hesitated to ask him any questions, because you probably would not get the answer (Warner, III, 354). Often they did not suggest things to him because they felt, if they did, they would get no answer (Koeckert, I, 522). When asked if he inquired of Mr. Street what the expenses of the litigation were, witness said, "You don't know Mr. Street * * * I knew him" (Lerch, I, 313). It is probably true that the Actuarial Committee did not ask Mr. Street what he was doing because they did not believe he would tell if they did (Harding, I, 280-281). If you undertook to say, "Now just why are you doing this, Mr. Street, may I ask"—"You leave that to me" (Koeckert, I, 523). Witness knew it would be useless to ask Mr. Street anything about his handling of the settlement. If he had, witness thinks Mr. Street would have said, "I am in charge of this affair and this is money that is needed for litigation in Missouri" (Lerch, I, 313-314). It is about right, that Mr. Street would not give it if you did, and then he would feel

so hurt. He turned on witness on one occasion, not about Missouri, and said "but since when don't you trust me." Witness told Mr. Street he did trust him, that every man in the business that he thought a lot of, trusted him. The trouble was that Mr. Street had gotten to the place where he had not trusted them; but they did not go into anything that he was handling (Koeckert, I, 524). Witness does not know that Mr. Street would not have told him what he was doing if witness had asked, but witness did not ask him because witness knew Mr. Street was in charge of the litigation (Lerch, I, 314).

He was a man with very strong principles (Bell, I, 157). He was a very impulsive, very blunt individual. He stated exactly what he thought, and he did not mince words about anything he had to say (Haid, II, 398). 445). He was that kind of dominating character that never made witness feel badly, although at the moment he was riding right over witness, who, as a boy, probably tried to resist as a boy might; but you might as well resist a stone wall (Moore, I, 541). His was the dominating mind on all subjects connected with the litigation. He had a dominating personality (Nourse, II, 123). He was a sort of a Hitler, you might say. He dominated everything with which he was connected (Bell, I, 158). He was a very positive character, quite strong in his opinions; but as a rule, his opinions were pretty well founded (Layton, III, 83). He rode over everybody (Moore, I, 540). The older he got the more arbitrary he became (Koeckert, I, 523). Mr. Koeckert was sorry to see some of these arbitrary actions. He often wished that Mr. Street had retired earlier than he did, because in later years Mr. Koeckert saw this change coming over him (Koeckert, I, 523).

It was suggested to witness that if a man is naturally secretive, naturally given to not taking people into his confidence, it does not usually work out that he can hold their confidence. Witness answered that Mr. Street had risen to a high point in their business; a point where the work he had done, the time and effort he had put into it, and the sincerity of purpose, that everyone just held him in that great respect so that you would not, or at least witness did not, ever think of asking him why he was doing so and so—why he was doing it this way (Koeckert, I, 523). The best explanation Mr. Koeckert can give of the way that all acted with Mr. Street is that that is the way it grew to be (Koeckert, I, 524).

"Q. Of course he had risen to a high position in the insurance world. But some of the rest of you, you for instance, in fact at that time, were holding a higher position in the insurance world than he was, and so was Mr. Kurth and so was Paul Haid, and so were other men higher in the insurance world than he?

A. Right.

Q. The truth is he had taken a step back. He had when he came East, he had not quite made it, and you say that he was secretive, that he would not take people into his confidence. It seems strange to me that a man who would not take other people into his confidence could hold their confidence. Can you explain it, or is it just one of those things?

A. I think that is the answer, just one of those things. I can't imagine any man who labored with him or tried to take an interest in the business, ever wanting to approach Mr. Street for an explanation" (Koeckert, I, 523-524).

Mr. Street died on February 1, 1938 (Folonie, III, 185; Kurth, I, 451; Koop, I, 407; Powrie, I, 134; Williams, He was quite positive in his actions (Bissell, II, I, 96; Thomas, II, 254). He was a pretty sick man, suffering from cancer, but lived nearly two years after he made the collection to furnish the 5 per cent (Koop, I, 420).

Witness thinks he can give a very fair presentation of the esteem in which Mr. Street was held by the life insurance fraternity generally. He was unique. Witness has never met another man like him. Mr. Street was the outstanding manager and executive in the midwest. Apparently he had only two interests, two subjects in which he took pride; one was the business itself, and the other was the midwest. Witness thinks he had a sneaking contempt for all who had anything to do with the business in the east. He used to refer to them as the "wise men of the East" which witness suspected he said with a grain of salt, with a mental reservation. Witness thinks he was the hardest working man he has ever known in the business, reputed to get down to his office between 7:30 and 8:00 o'clock and left at dark. Witness thinks that during the time he knew Mr. Street, he must have devoted 25 per cent or 30 per cent of his time to the general activities of the business, not to the selfish interests of his own company. He loved the business. He

was proud of the part he took in it. He had a magnificent record in connection with all activities that he conducted, was chairman of a great many committees, and as chairman he did the work and did it with such a fine average of performance that he came to be regarded by all who had acquaintance with him as being, as the French would say, "without fear and without reproach."

Question. He was the Chevalier Bayard in other words?

Answer. "Well, in rough exterior, very blunt, very; stepped on your toes if you got them in his way; but none of us ever questioned his integrity."

Witness attended a fiftieth anniversary party that was given in Mr. Street's honor about one-half dozen years ago, and the evidence there of the esteem in which he was held was quite overwhelming. Witness thinks that the opinion as expressed was the opinion generally entertained by the presidents and other high executives of the fire insurance companies involved in the Missouri litigation. You will find an occasional man who has permitted personal prejudice to obscure his impartial judgment, but witness thinks that what he has said about him is very generally true (Long, III, 108-110).

V.

INSTITUTION AND PROGRESS OF THE LITIGATION.

INSTITUTION, NATURE AND CONTROL OF THE SUITS.

The Missouri fire rate litigation began in 1922 (Terry, III, 373). In January, 1922, there was an order of the Superintendent of Insurance making a reduction of 15 per cent. A bill to enjoin it was filed in January or February, 1922, dismissed in the early months of that year, the temporary injunction order was dissolved, the rate order was withdrawn, and a written stipulation was made that the Superintendent would have a new rate order with a hearing preliminary to it, having had none as to that first rate order. That stipulation was entered into by a number of lawyers, including Mr. Folonie's partner, Mr. Hicks. Mr. Folonie did not participate in that first case. In October, 1922, after some kind of a hearing, another rate order of 10 per cent reduction was entered. Mr. Folonie counseled a little in that but took no active part in it. He went into a hospital that winter about the time the order was entered (Folonie, III, 207). He entered actively into the lawsuit and the series of litigation in June, 1923 (Folonie, III, 157, 207). The companies brought suit in 1922. It was a defense by the companies against the 10 per cent rate reduction ordered by Superintendent Hyde (Terry, III, 373, 374). The Subscribers Actuarial Committee, in conjunction with P. W. Terry, Manager of the Missouri Inspection Bureau, was responsible in initiating and instituting these suits (Folonie, III, 157). Mr. Terry cannot definitely tell who recommended the suits or finally determined upon their institution (Terry, III, 374). When Mr. Folonie actively entered the litigation in 1923 he was instructed by Mr. Ralph Ives, the chairman of the committee and predecessor of Mr. Street, that the objective of the litigation was to secure a declaration of the underlying methods of setting up a proper account with the State as to profit and loss; that their predicate was earned premiums as income and incurred loss and expense as outgo as the principal items. The attitude of the state was that it was to be primarily written premiums and paid losses and expenses. Mr. Folonie was advised that the money involved was

entirely secondary to establishing that principle, and to take it to the highest court he could take it, preferably to the Supreme Court of the United States, to have that accounting principle settled because it made trouble in every state (Folonie, III, 207-208).

Thereafter these 16 2-3 per cent suits were brought (Terry, III, 374). They were commenced in May, 1930 (Folonie, III, 157). Witness recommended that they be brought after conferring with Mr. Folonie (Terry, III, 374). He conferred with Mr. Folonie about them and they agreed to bring the suits (Terry, III, 375). Mr. Folonie was in consultation in the preparation of the filings precedent to any litigation. The filings were the applications and supporting data filed by the Superintendent of Insurance upon which an increase in rates was based (Folonie, III, 157). Mr. Terry made certain filings with the Insurance Department in December, 1929, for the purpose of securing an increase in the insurance rates. From time to time the effective date of the increase was postponed until June 1, 1930. Previous to that date, after consultation with Mr. Folonie, Mr. Terry, representing all stock fire insurance companies, directed Mr. Folonie to sustain that filing, if possible (Terry, III, 375-376). Mr. Folonie brought the suits (Terry, III, 375). Mr. Terry, of the Missouri Inspection Bureau, had charge of filing the papers in connection with the 16 2-3 per cent rate increase. He was the filing agent. Mr. Folonie went in advance and saw what he was doing with them. They were carried by Mr. Terry to the office of the Superintendent of Insurance and placed upon his desk. They constituted applications for an increase in rates, supported by figures of the companies and the annual statements, and computed profit and loss, to show that the present rates were inadequate. Mr. Folonie would say they were tabulated on hundreds of very large accounting sheets. There was a great big stack of papers, company by company. The facts relied upon in filing these papers were their five years' experience prior to 1929, the five years immediately preceding that as shown by their books and records and their filings in the Insurance Department. Their construction of them was that they showed that the rates, as collected, resulted in a loss, which did not leave more than a reasonable profit if the companies got the increase for which they were filing (Folonie, III, 221-222).

After they were started the responsibility was up to the Subscribers Actuarial Committee. The question as to whether or not the suits should be brought depended upon whether or not the figures would show a reasonable return according to Mr. Terry's ideas. Mr. Terry considered that an actuarial problem. That is what he passed upon in the first place. Mr. Terry has always assumed, without knowing the legal aspect of it, that all he did was to start the suits. They were not carried along in the name of the Missouri Inspection Bureau, but in the name of the individual companies. A number of these companies vetoed the bringing of the suit, and either dismissed or instructed the attorneys to dismiss their suits, and ceased to be parties to the litigation (Terry, III, 387-388). In one sense the companies which Mr. Folonie represented acted in concert, with one purpose, as a common enterprise, but in another sense, no. The cases were in three general divisions: (1) Restitution matters arising out of the old litigation, (2) The suits in the federal court by some 137 companies, and (3) A suit in the Circuit Court of Cole County, involving 70 odd companies. In addition, there were prohibitions, mandamus suits, and what not, that affected different groups (Folonie, III, 158-159). Mr. Folonie was continuously in the various phases of the litigation from June, 1923 (Folonie, III, 157). 75 or 76 companies were involved in the state court litigation and not involved in the federal court. Some of the companies that originally started in dropped out, and some of them were dismissed in the federal court, and made parties in the state court. The number changed, but it was 75, more or less (Folonie, III, 212).

LIST OF COMPANION CASES NOW PENDING IN THIS COURT.

Defendant's Exhibit 1 (I, 8-15) is a list of the cases that were pending in the federal court at the time the final decrees were entered February 1, 1936. Each company is an individual plaintiff, except that in case No. 383 the plaintiffs are The Phoenix Insurance Company, The Minneapolis Fire and Marine Insurance Company and Central States Insurance Company, and The Phoenix Insurance Company only is named as plaintiff in the exhibit. Said exhibit is as follows:

"Court Number			
271	Agricultural Insurance Company	vs.	Ray B. Lucas et al.
273	Aetna Insurance Company	vs.	"
274	The Alliance Insurance Company	vs.	"
275	American Alliance Insurance Company	vs.	"
276	American Central Insurance Company	vs.	"
277	American Eagle Fire Insurance Company	vs.	"
279	American Union Insurance Company of New York	vs.	"
280	Atlas Assurance Company, Ltd.	vs.	"
281	Automobile Insurance Company of Hartford, Connecticut	vs.	"
282	Bankers and Shippers Insurance Company	vs.	"
283	Boston Insurance Company	vs.	"
284	British America Assurance Company	vs.	"
286	Caledonian Insurance Company	vs.	"
288	California Insurance Company	vs.	"
289	Camden Fire Insurance Association	vs.	"
292	Chicago Fire and Marine Insurance Company	vs.	"
293	Citizens Insurance Company	vs.	"
294	City of New York Insurance Company	vs.	"
295	Columbia Insurance Company (New Jersey)	vs.	"
296	Columbia Fire Insurance Company	vs.	"

Court Number			
297	Commerce Insurance Company	vs.	Ray B. Lucas, et al.
298	Commercial Union Assurance Company, Ltd.	vs.	"
299	Commercial Union Fire Ins. Co.	vs.	"
301	Concordia Fire Insurance Company of Milwaukee	vs.	"
302	Connecticut Fire Insurance Company	vs.	"
303	Continental Insurance Company	vs.	"
304	County Fire Insurance Company of Philadelphia	vs.	"
305	Detroit Fire and Marine Insurance Company	vs.	"
306	Dubuque Fire and Marine Insurance Company	vs.	"
307	The Eagle Fire Company of New York	vs.	"
308	Eagle Star and British Dominions Insurance Company	vs.	"
309	East and West Insurance Company	vs.	"
310	Equitable Fire and Marine Insurance Company	vs.	"
312	Federal Union Insurance Company	vs.	"
313	Fidelity Phenix Fire Insurance Company	vs.	"
314	Fire Association of Philadelphia	vs.	"
315	Fireman's Fund Insurance Company	vs.	"
316	Firemen's Insurance Company	vs.	"

Court Number		
317	First American Fire Insurance Company	vs. Ray B. Lucas, et al.
318	Franklin Fire Insurance Company of Philadelphia	vs. "
319	Franklin National Insurance Company	vs. "
320	Girard Fire and Marine Insurance Company	vs. "
321	Glens Falls Insurance Company	vs. "
322	Globe and Rutgers Fire Insurance Company	vs. "
323	Granite State Fire Insurance Company	vs. "
324	Great American Insurance Company	vs. "
325	Guaranty Fire Insurance Company of Providence	vs. "
326	The Hanover Fire Insurance Company	vs. "
327	Hartford Fire Insurance Company	vs. "
328	The Home Insurance Company	vs. "
329	Home Fire and Marine Insurance Company	vs. "
330	Hudson Insurance Company	vs. "
331	Imperial Assurance Company	vs. "
332	Importers and Exporters Insurance Company	vs. "
334	Insurance Company of North America	vs. "
335	Insurance Company of the State of Pennsylvania	vs. "
336	The Law Union and Rock Insurance Company, Ltd.	vs. "

Court Number			
338	Liverpool and London and Globe Insurance Company, Ltd.	vs.	Ray B. Lucas, et al.
339	The London Assurance Corporation	vs.	"
340	London and Lancashire Insurance Company, Ltd.	vs.	"
341	London and Provincial Marine and General Ins. Co., Ltd.	vs.	"
342	London and Scottish Assurance Corporation, Ltd.	vs.	"
343	Lumbermen's Insurance Company	vs.	"
344	Manhattan Fire and Marine Insurance Company	vs.	"
345	Massachusetts Fire and Marine Insurance Company	vs.	"
346	Mechanics Insurance Company of Philadelphia	vs.	"
347	Merchants Insurance Company	vs.	"
348	Merchants Fire Assurance Corporation of New York	vs.	"
349	Merchants Fire Insurance Company	vs.	"
350	Mercury Insurance Company	vs.	"
351	Michigan Fire and Marine Insurance Company	vs.	"
352	Milwaukee Mechanics Insurance Company	vs.	"

Court Number		
354	National Ben Franklin Fire Insurance Company	vs. Ray B. Lucas, et al.
355	National Fire Insurance Company of Hartford	vs. "
356	National Liberty Insurance Company of America	vs. "
357	National Reserve Insurance Company	vs. "
358	National Security Fire Insurance Company	vs. "
359	National Union Fire Insurance Company	vs. "
361	The Newark Fire Insurance Company	vs. "
362	New England Fire Insurance Company	vs. "
363	New Hampshire Fire Insurance Company	vs. "
364	New Jersey Insurance Company	vs. "
366	New York Underwriters Insurance Company	vs. "
367	Niagara Fire Insurance Company	vs. "
369	The Northern Assurance Company, Ltd.	vs. "
370	Northern Insurance Company	vs. "
371	North River Insurance Company	vs. "
372	Northwestern Fire and Marine Insurance Company	vs. "
374	Norwich Union Fire Insurance Society, Ltd.	vs. "
375	Old Colony Insurance Company	vs. "

Court Number		
376	Orient Insurance Company	vs. Ray B. Lucas, et al.
377	Pacific Fire Insurance Company	vs. "
378	Palatine Insurance Company, Ltd.	vs. "
379	Patriotic Insurance Company of America	vs. "
381	Philadelphia Fire and Marine Insurance Company	vs. "
382	Phoenix Assurance Company, Ltd.	vs. "
383	The Phoenix Insurance Company *et al.*	vs. "
385	Presidential Fire and Marine Insurance Company	vs. "
386	Providence Washington Insurance Company	vs. "
387	Provident Fire Insurance Company	vs. "
389	Queen Insurance Company of America	vs. "
390	Reliance Insurance Company of Philadelphia	vs. "
391	Rhode Island Insurance Company	vs. "
392	Royal Exchange Assurance	vs. "
393	Royal Insurance Company, Ltd.	vs. "
394	Safeguard Insurance Company	vs. "
395	St. Paul Fire and Marine Insurance Company	vs. "
396	Scottish Union and National Insurance Company	vs. "

Court Number		
397	Security Insurance Company of New Haven	vs. Ray B. Lucas, et al.
398	Sentinel Fire Insurance Company	vs. "
399	Springfield Fire and Marine Insurance Company	vs. "
400	Standard Fire Insurance Company of Connecticut	vs. "
401	Standard Fire Insurance Company of New Jersey	vs. "
402	Star Insurance Company of America	vs. "
403	The State Assurance Company, Ltd.	vs. "
404	Stuyvesant Insurance Company	vs. "
405	Sun Insurance Office, Ltd.	vs. "
406	Superior Fire Insurance Company	vs. "
407	Svea Fire and Life Insurance Company	vs. "
408	Tokio Marine and Fire Insurance Company, Ltd.	vs. "
409	Transcontinental Insurance Company	vs. "
410	The Travelers Fire Insurance Company	vs. "
411	Twin City Fire Insurance Company	vs. "
412	Union Assurance Society, Ltd.	vs. "
413	Union Fire Insurance Company	vs. "
414	United Firemen's Insurance Company of Philadelphia	vs. "

Court Number		
415	United States Fire Insurance Co.	vs. Ray B. Lucas, et al.
416	United States Merchants and Shippers Insurance Company	vs. "
418	Victory Insurance Company	vs. "
419	Westchester Fire Insurance Company	vs. "
420	Western Assurance Company	vs. "
422	The World Fire and Marine Insurance Company	vs. "
423	Yorkshire Insurance Company, Ltd.	vs. "
425	Mechanics and Traders Insurance Company	vs. "
426	Potomac Insurance Company of the District of Columbia"	vs. "

STATE COURT LITIGATION DECREES IN STATE COURT RESTITUTION CASES.

In the early part of 1935, D. F. Calfee, referee, in the state court case, had found in substance that the companies were entitled to two thirds of their increase on the fire class of business and all of their increase on the tornado class; and the case was pending on exceptions to that report by both sides (Folonie, III, 212).

In December, 1935, there was a decree rendered in the restitution case in which the court, not at the instance of the insurance companies' attorneys, incorporated $200,000.00 of the judgment against those companies in addition to the amounts which it was found they were entitled to restore or bound to restore. The court distributed that pro rata over all the companies in its decree, and Mr. Folonie saw Mr. O'Malley repeatedly over a short period of time after that to get Mr. O'Malley to specifically agree that he would not demand this $200,000.00 which they had stipulated he was to have, in addition to what the court had already collected. Mr. O'Malley

finally agreed that that was correct; so that the proceeds would inure to him, and he should not exact the $200,000.00 all over again, as agreed in the written contract (Folonie, III, 192).

The fact that there was not a complete identity made Mr. Folonie feel that there might be a claim that it was in addition to the $200,000.00. In fact, it was an identical item. There was an exact identity of parties in the restitution case in which the judgment was rendered, but the $200,000.00 that the court incorporated into the judgment was not identified as being the $200,000.00 that they had stipulated in writing they would pay to the Superintendent to reimburse him for expense in that litigation. The parties in the new and old litigation differed (Folonie, III, 192).

Plaintiff's Exhibit 330 (IV, 474-511) is a certified copy of a final judgment entered by the Circuit Court of Cole County, Missouri, December, 1935, in the case of *Aetna Insurance Company et al.* v. *R. E. O'Malley,* (III, 473-474). The judgment recites that the matter came on to be heard on defendant's motion for restitution, asking restitution for amounts asserted to have been collected by the plaintiff in excess of lawful and legal rates upon fire, lightning, hail, and windstorm insurance transacted by the plaintiffs in the State of Missouri between November 15, 1922, and August 8, 1929, and also upon the report of the commissioners and custodians appointed by the court and the exceptions to the report (III, 474). It recites that the court finds that each of the plaintiffs presented and filed its full and complete account with the commissioners and custodians showing the total amount of excess premiums by them respectively collected in excess of that justified by the order of the Superintendent of Insurance of October 9, 1922, and the amount in its hands remaining unrestored to policyholders, and that they are truly and correctly accounted for, reported, and are in the respective amounts therein set out.

The decree then sets out opposite the name of each of the plaintiffs in said case the total excess collections as to each of said companies, and the amount not refunded to policyholders by each of said companies, and the total of collections by all the companies was $12,354,747.96, and that the total of the amounts not refunded to policyholders was $1,613,402.81 (III, 474-481).

The decree then recites that, subsequent to making such full, true, and complete accounts, certain of the

plaintiffs therein named made payments to the commissioners of amounts in addition to those contained in their accounts creative of an additional liability for restitution as to them, and that such plaintiffs had made corrections in their accounts. The names of such last mentioned plaintiffs were then set out, with amounts of such additional payments made by them set opposite their names, and it is recited that the total of such additional payments amounted to $1,436.31 (III, 481-482).

The decree then recites that the interest properly to be calculated against the sum owing by respective plaintiffs, as the court had by its order of December 14, 1934, directed, is, as respects such plaintiffs respectively, in amounts as follows:

The name of each plaintiff is then set out, such amount of interest as to each company is set opposite each name, and it is recited that the total amount of such interest is $857,688.09 (III, 482-487).

The decree then recites that the court further finds that certain plaintiffs therein next enumerated additionally owe and ought to pay amounts owing as restitution for which they assert they issued outstanding checks and drafts and which the court finds is subject to restitution, notwithstanding such additional amounts and such checks and drafts are outstanding, which are found to be as follows:

Then follows the name of each plaintiff and opposite the name of each is the amount so found for which such companies had issued outstanding checks and drafts, and there is a recitation that the total thereof is $48,492.63 (III, 488-490).

The decree then recites that, in addition, the plaintiffs and the Patriotic Insurance Company ought justly to further pay the sum of $200,000.00 which they had agreed to pay to the Superintendent of Insurance, and that in addition to the specific sums found owing as restitution, the sum of $199,618.23 of said $200,000.00 should, by the plaintiffs in the aggregate, be paid as additional restitution, which said sum is allocated to the respective plaintiffs (III, 490), in the proportion that excess collections of each bears to the total excess collections of all remaining plaintiffs, which said distribution of $199,618.23 is in the respective sums as follows: (The sum of $381.77 to be assessed against the Patriotic Insurance Company in a separate suit for restitution pend-

ing in such a court.) Then follows the name of each of the plaintiffs and opposite each name appears the amount assignable to each out of $200,000.00 (III, 490-496).

The decree then recites that the plaintiffs have respectively paid to the commissioners and custodians sums on account of restitution above recited for which they are entitled to credit in the amounts hereinafter respectively recited, namely:

Then follows the name of each plaintiff and opposite the name of each appears the amount so paid to the commissioners and custodians (III, 496-502).

The decree then recites that the court finds that the Chicago Fire and Marine Insurance Company and the Fidelity Union Fire Insurance Company, plaintiffs therein, are insolvent and that any judgment against them would be uncollectible; that therefore the sums assigned against them in the sum of $200,000.00 are assigned against the remaining plaintiffs and that the Chicago Fire and Marine Insurance Company and Fidelity Union Fire Insurance Company are dismissed from the proceeding (III, 502-503).

The decree then recites that respective plaintiffs are still indebted to the defendant as representative of policyholders, and still owe, as amounts necessary to make full and complete restitution to policyholders, the sums set opposite their respective names thereafter appearing, and therefore (III, 503), the court doth order, decree, and adjudge that each plaintiff shall respectively pay into the registry of the court the balance respectively owing as therein next recited, namely:

Then follows the name of each plaintiff, and opposite the name of each appears the amount of the balance owing by them and reciting that the total of the balance owing by the plaintiffs is $1,067,948.80 (III, 503-508).

The decree then recites that the court further orders, decrees and adjudges that, whereas the accounting made by Northern Insurance Company of New York includes the accounting of and was made for and in behalf of Assurance Company of America, as restitution on its part (III, 508); that the accounting made by Phoenix Insurance Company of Connecticut includes an accounting of restitution owing by Central States Fire Insurance Company, and Connecticut Fire Insurance Company, Equitable Fire and Marine Insurance Company and Minneap-

olis Fire and Marine Insurance Company, therefore, upon payment by (III, 508-509) Northern Insurance Company and by Phoenix Insurance Company as above provided, of amount found by them owing it shall constitute a satisfaction and discharge of claim of restitution against those companies, and that all provisions of the judgment thereafter contained, wherein reference is made to plaintiffs, are declared to be applicable to said mentioned companies as well as to those specifically listed (III, 509).

The decree then contains provisions as to how and when payment shall be made by the respective plaintiffs to the commissioners and custodians of the court, and for the report thereof to the court, and that upon making of such payments, the respective plaintiffs are entitled to have the judgment against them satisfied and discharged (III, 509) and by such action on their part will have made full restitution to all policyholders from whom any unlawful or excess premium collections were exacted and collected in excess of the legal rate fixed by the order of the Superintendent of Insurance of October 9, 1922; that all policyholders are enjoined and restrained from asserting or making any claim for restitution against the plaintiffs or any of them who so comply, because of exaction of excess premium collections in excess of the rate fixed by said order on October 9, 1922, and collected between November 15, 1922, and August 8, 1929. The decree recites that said policyholders shall have their sole recourse against the sums so paid into court (III, 509).

The decree recites that the Commercial Union Fire Insurance Company has paid to the commissioners and custodians in excess of its liabilities for restitution, outstanding drafts and checks, interest and pro rata part of the $200,000.00, and directs the commissioners and custodians to refund said excess to said company in the sum of $2,990.70, and that said Commercial Union Fire Insurance Company (III, 509-510) is discharged from all obligations for restitution.

It is further provided that upon payment of the respective amounts therein adjudged, the plaintiffs and the sureties on their bond are discharged and released (III, 510-511).

Plaintiff's Exhibit 331 (III, 511-512) is the certificate of the clerk of the Circuit Court of Cole County, Missouri, that the above judgment is satisfied of record by

the following entry which appears on the margin of the record:

> "This judgment is satisfied in full, debt, interest, and costs, this 16th day of January, 1936, and I do further certify that in accordance with the provisions of the within judgment and decree the sums therein adjudged to be paid have been paid to the Commissioners and Custodians as therein required and said Commissioners and said Custodians have, in accordance with said judgment and decree, reported to the Court that all the parties therein named have paid to them the amounts therein adjudged to be so paid."

Plaintiff's Exhibit 332 (III, 513) is a copy of the final judgment of the Circuit Court of Cole County, Missouri, in the case of *R. E. O'Malley, Superintendent of the Insurance Department of the State of Missouri, plaintiff, v. Patriotic Assurance Co., Ltd., and Patriotic Insurance Company, defendants*, No. 7825. It is similar to the judgment, Exhibit 330, except that only two insurance companies are defendants. It shows that these two defendants' total excess collection was $23,641.13; that the amount not refunded to policyholders was $16,793.14, which last sum has been ordered paid to the commissioners and custodians as provided for in an order of October 5, 1935; that the interest properly calculated against such said unrefunded sum is $4,787.45; that the pro rata of the $200,000.00 (III, 513-514), which the companies agreed to pay to the Superintendent of Insurance, as to these defendants, is $381.77; that the defendants are still indebted to plaintiff, as representatives of policyholders, and still owe the sum of $5,169.22, as the amount necessary to make full and complete restitution to policyholders.

It is ordered, adjudged, and decreed that defendant, Patriotic Insurance Company, shall pay into the registry of the court the sum of $5,169.22. The decree is dated December 2, 1935 (III, 514-515).

Attorney for plaintiffs stated to the master during the hearing that the judgment (Exhibit 332) was satisfied of record on June 16, 1937. Attorney for defendant, in making his admission, did not expressly admit that the judgment was so satisfied and did not deny the statement of plaintiffs' attorney (III, 512).

THE SETTLEMENT.

On May 18, 1935, a written agreement of settlement of these cases was signed by R. Emmet O'Malley, Superintendent of the Insurance Department of the State of Missouri, and Charles R. Street, as agent for the stock fire insurance companies, parties to rate litigation in the United States District Court for the Western District of Missouri and in the Circuit Court of Cole County, Missouri (see "XIV Negotiation of Settlement").

The objects of the settlement were: (1) To satisfy the local agent, (2) To satisfy some companies that felt that they were sick and tired of this litigation and expense, and (3) It was interfering with the progress of "our business in Missouri" (Bell, I, 139).

The companies were unable to make filings of rates and to procure the policy forms and coverages which were filed in adjoining states; in other words, their progress in Missouri was being blocked by this continuous, longstanding litigation. They had better sacrifice something than continue it. The agents would have profited to a greater extent if the settlement had been made, with the agent getting only the commission on that part of the impounded premiums which the companies retained (Bell, I, 139). Under the settlement Mr. O'Malley put a new rate schedule into effect which theoretically raised the rate level over the one which Mr. Hyde had fixed. The minimum or maximum figure that Mr. Street set up in the compromise was about 97 1-2. While he raised the level at the same time by re-rating individual classes of risks, it did not come out just exactly that way. It came out very much lower. While he got the raise in the rate level, yet when you reclassify your risks the effect on the gross income of the Missouri compromise did not amount to what it would if you had just put in that raise of level and let it go at that. The bare outline of the rate charge was that they had previously drawn up figures which were approximately between the 105 level and the 90 level. That was done in the summer of 1934; but at this time they contemplated that it was very essential to get increases on certain particular classes. Those increases were the ones which were foregone after Mr. Terry's conference with Mr. Street in 1935 (Terry, III, 385-386). After the stipulation for settlement Mr. Folonie worked almost continuously on presenting the matter to respective courts in which cases were pending and in discussion of the matter with Mr. Street and others in in-

terest, to facilitate appropriate court orders securing the completion and approval of the settlement by the courts. Mr. Folonie was often in conference with Mr. Street in regard to those matters (Folonie, III, 191).

After the compromise was agreed upon, Mr. Terry started, in a general way, to prepare the details of the filings. He had no conference with Mr. Street in regard to the matter (Terry, III, 384). Mr. Folonie and Mr. Berger prepared the motions for a decree in Mr. Berger's office, and Mr. Berger verified the motion. At that time Mr. Berger absolutely believed that the compromise had been made in good faith, or he would not have verified the motion (Berger, III, 395). The decree was entered on February 1, 1936 (Folonie, III, 191).

THE DECREE OF THIS COURT.

Defendants' Exhibit "3" was introduced in evidence (I, 32-40), which is a copy of the decree that was rendered by this court on February 1, 1936, and entered in each of the 137 companion cases. It recites that the cause came on to be heard upon the verified motion of plaintiff for a decree and a stipulation executed by counsel for plaintiff and defendants; that evidence was heard in open court; that no policyholders contributing to the funds deposited under order of the court had intervened as permitted by an order of the court on November 13, 1935, and It Was Ordered, Adjudged and Decreed as follows:

"1. The controversy herein having been settled and disposed of by the parties and no controversy between the parties remaining, this cause is hereby dismissed.

"2. The court does direct W. T. Kemper, heretofore appointed Custodian of the said funds, to distribute the said impounded funds in his custody as follows:

"A. As respects funds reported and impounded by plaintiff upon policies effective prior to May 1, 1935, he is directed to refund to (pay to) the assured (policyholders), in the manner hereinafter provided, one fifth (1/5th) of all net amounts so impounded. As respects funds reported and impounded by plaintiff upon policies effective after April 30, 1935, he is directed to refund to (pay to) the assured, in the manner hereinafter provided, one-third (1/3rd) of all net amounts so impounded. Such payments shall be made to the respective assured on the prorata basis of the net amounts impounded on their respective policies.

"Aa. The Custodian shall additionally pay to the assured, assured's proportion of the net interest and accretions from impounded funds as same exists at the date of this Decree, such proportion to be ascertained and determined as hereinafter in this sub-clause Aa provided. The amount assignable to case of plaintiff shall be an amount bearing the same ratio to the total amount of net interest and accretions as the total net amount of funds impounded by this plaintiff bears to the whole net sum impounded by this plaintiff and all of the other contributing companies to the funds impounded with the Custodian (such other contributing companies being plaintiffs in companion cases in which decrees identical with this Decree are being entered concurrently with the entry of this Decree, including those companies mentioned in paragraph 9 hereof). This amount so found properly assignable to plaintiff's case shall be allocated to all assured of this plaintiff to the extent and in the same proportion as the impounded fund is allocated to them in sub-paragraph A above. For the purpose of distribution to assured this sum so allocated to all assured of plaintiff shall be divided into 276 moieties, whereof 23 moieties shall be allocated to policies appearing on the report for the first impounding period, and 22 moieties to policies reported on the report for the second impounding period, and so progressively one moiety less for policies reported for each successive impounding period. The fund so allocated to any impounding period shall be prorated among the several policies appearing on the report of this plaintiff for such impounding period by finding the ratio existing between the amount of the fund so allocated to such impounding period, and such portion of the total funds impounded by this plaintiff for such impounding period as shall be allocated to the assured according to the provisions of subparagraph A above, and by applying such ratio to the amount to be refunded to the assured (as provided in subparagraph A above) out of the total premiums impounded for such period in respect of each such policy. The foregoing provisions as to distribution of interest and accretions to assured is upon the assumption that the plaintiff has made 23 impounding reports; and if the plaintiff has made less than 23 impounding reports, the Custodian shall make the distribution in a similar manner and upon a similar basis.

"In determining net earnings and accretions for purposes of this paragraph the Custodian shall take into

consideration as of the date of this Decree: Bank deposits and accrued interest, market value of securities at closing price on New York Stock Exchange at close of business at date of this Decree, accrued interest thereon, accounts receivable, expenses paid in advance, and from aggregate of above deduct total remaining impounded principal, all unpaid allowances and expenses of the Custodian. The difference so computed shall be the net interest and accretions within the meaning of this paragraph.

"Determination of net interest and accretions for other purposes shall be made in accordance with usual accounting practice.

"Ab. To render certain, and not subject to fluctuation, the amount so to be paid to the assured, the Custodian is directed to sell and convert into cash sufficient of the securities now in his custody to create a fund from which the Custodian shall make restitution to assured as respects both impounded fund and net interest and accretions as herein provided, and if the amount cannot by him be calculated with certainty, he may create such fund upon estimation subject to later correction by him, which said sums so derived he shall deposit, subject to his withdrawal as Custodian, as a trust fund with The Commerce Trust Company of Kansas City, Missouri, out of which the Custodian shall make distribution to assured, but such trust company shall not be responsible for the disposition of such fund by the Custodian; Provided, that if such sum or sums be deposited upon estimation, and be later found to be excessive or inadequate, the Custodian shall make the necessary adjustments in said trust fund.

"Ac. The Custodian shall pay and distribute to the assured the amounts as provided in paragraph A and paragraph Aa hereinabove, as soon as is practical for him after closing his books and accounts, and shall pay the said sums on each policy by the issuing and mailing of a check to the assured named in the original impounding report in his possession, and to the addressses therein given; Provided, however, that if there are or shall be any claims or assignments filed with him that create any dispute as to who is entitled to the fund due on any particular policy, he may apply to this Court for further orders in regard thereto; the Court retaining full jurisdiction to make any and all further orders in regard to the preservation, payment and distribution of these funds, as to the method and

manner of so doing, the determination of the rights of particular parties to receive the funds, and any and all other matters in connection therewith except that such claims or assignments must be filed with the Custodian on or before June 30, 1936, or be forever barred in distribution under this Decree. The Custodian shall not be required to personally sign such checks, but may delegate others to sign same, or may use any of the customary signature-making or check signing devices in executing same. The Custodian may place on such checks a recital providing that same shall not be valid unless presented for payment on or before a date to be fixed by him.

"B. At the time, in the manner, and subject to the withholding, and the right to withhold, and upon the conditions, hereinafter set forth, the Custodian shall distribute and pay:

"1. To the plaintiff, 50% of the net fund reported and impounded with him by the plaintiff upon all policies upon which impounding is made; and

"2. To Robert J. Folonie, one of the counsel for plaintiff, and Charles R. Street, Chairman of the Committee for the Insurance Companies, who, for them, are supervising this litigation, as Trustees for and on behalf of plaintiff, or the survivor of them or their successor or successors, 30% of the net funds reported and impounded as respects all policies effective prior to May 1, 1935, and 16-⅔% of the net funds reported and impounded by the plaintiff upon policies effective after April 30, 1935, which said sums so paid to said Trustees are paid to them as Trustees for the plaintiff for which (as well as any other amounts to be paid to them under this Decree) they shall account only to the plaintiff; but if this Court shall so order, they are to file a report of disbursements with the Judges of this Court. The Custodian shall not be obligated to see to the application by the Trustees of the amounts by him paid to them under the provisions of this Decree.

"The Custodian is directed forthwith to disburse to the plaintiff as a partial payment on account of the above mentioned distribution provided for plaintiff, an amount equivalent to 50% of the net fund impounded with the Custodian by plaintiff up to July 15, 1935; and the Custodian is directed forthwith to disburse to said Robert J. Folonie and Charles R. Street, Trustees, as a partial payment on account of the above mentioned distribution provided for said Trustees, an amount equivalent to 30%

of the net fund impounded with the Custodian by said plaintiff up to July 15, 1935; Provided, however, that if these distributions (together with the distributions to be made to the assured under the provisions of subparagraph A hereof) would result in distributing all or within five per cent (5%) of the total net fund impounded by the plaintiff, the Custodian is authorized to reduce the percentage or amount of the distribution to the plaintiff to an amount that will leave in the possession of the Custodian after making provision for refunds for the assured under paragraph A, a sum equivalent to five per cent (5%) of the total net fund impounded by the plaintiff. The balance of the fund remaining subject to distribution to the plaintiff and the Trustees respectively as provided in this subparagraph B shall be withheld and retained by the Custodian subject to the further order of the Court.

"All payments in this Decree provided, whether of principal distributable to plaintiff, or principal or interest and accretions distributable to the Trustees, shall be made by the Custodian as far as practicable by the delivery to the party entitled to receive payment, of securities held by the Custodian, to be selected by the Custodian, which shall be accepted and credited on the amount payable at the market value thereof (including accrued interest) as reflected by the closing quotation on the New York Stock Exchange at the close of business on the last business day preceding the date of the Custodian's making delivery, or ordering the shipment thereof.

"C. The Custodian shall, out of the balance of accretions and interest left after charging against the same the amount to be refunded to assured under the provisions of paragraph Aa hereof, pay the court costs; all unpaid or future expenses of the Custodian as have been or may be by the Court authorized and the lawful charges of and allowances to the present or past officers or appointees of this Court, and their agents, employees and attorneys; and other charges which may be by the Court from time to time directed. Any interest or gain from the handling of the funds subsequent to the date of this Decree shall be added to the interest and accretions above referred to, and if any securities shall be sold at a loss or other losses occur, the deficiency shall be charged against such balance.

"After the Custodian has made all of the payments and distributions required under the provisions of this Decree, the remainder of said fund not so expended or required, shall be paid to Robert J. Folonie and Charles R. Street, Trustees for the plaintiff, or the survivor of them, or their successors, provided that if at any time it shall be made to appear to the Court that it is unnecessary to longer retain all of said fund, then upon proper application therefor the Court may order payment to the Trustees of such part as the Court finds to be in excess of the amount necessary to be retained for such purpose.

"The Custodian need not allocate or assign any part of the net balance of interest and accretions fund as same exists at any time, to the plaintiff, as said fund has been derived from the investment of funds of this plaintiff and the other said companies having companion suits in this Court as part of this same controversy.

"D. The amounts which under the provisions of paragraph B hereof are to be withheld and retained by the Custodian subject to the further orders of the Court, may be resorted to in case the above interest and accretions fund shall be exhausted, in which event said amount so retained shall be subject to having imposed against it all charges above provided to be made against said interest and increment fund. If the Court shall at any time deem the amount so withheld and retained to be excessive, or to be no longer necessary, upon proper application therefor it may order the distribution thereof in whole or in part.

"3. Whenever reference is made herein to impounded funds, or fund reported and impounded by plaintiff, or plaintiffs, it includes the principal amount of impounded funds in the hands of the Custodian at the date of this Decree, or the principal amount of funds that may come into his hands at some later date as herein provided. By the term 'net amounts impounded,' or the term 'net funds' impounded, is meant the amount of the principal of all impounded funds remaining after all credits by cancellation, or otherwise, have been allowed by the Custodian. No interest or accretions shall be considered in determining either the amount of the impounded funds, or the amount of the net impounded funds. In making distribution as herein provided, the Custodian may rely upon any facts contained in the records of impounding as filed by the plaintiff, and shall not be re-

quired to consider any facts outside of said records except as contemplated in Ac above.

"4. The Federal Reserve Bank of Kansas City is hereby authorized and directed to deliver any or all bonds now or hereafter held by it for said W. T. Kemper, as Custodian, to, or as directed by said W. T. Kemper.

"5. Except to the extent that same may be inconsistent with specific provisions hereof, all power and authority given to the Custodian by this Court under any of its orders heretofore entered, shall continue until further order of the Court.

"6. The Custodian is authorized to permit or require the plaintiff to report other additional impoundings of any premium collections respecting policies effective prior to November 11, 1935, and not previously reported, and cancellations or endorsements effective prior to November 11, 1935, upon policies effective prior to that date, and shall advise the plaintiff by mail at least ten (10) days before the final closing of his books after which no further reports will be accepted. Such additional and supplemental reports shall be considered as supplemental and additional to and a part of the impounding reports for the twenty-third impounding period.

"7. Notwithstanding dismissal of this cause, the Court expressly reserves power and authority, and retains jurisdiction as respects taxation and assessment of costs and allowances for fees to its officers and appointees (and their attorneys and agents) for services already rendered, or hereafter rendered, and to make orders respecting the obligation of the parties, or the fund for payment thereof, and to make further orders in aid of distribution of impounded moneys, and to make appropriate orders respecting sale, investment, safe-guarding and distribution of impounded moneys, interest and accretions, and disposition of office furniture and fixtures, and discharge of incidental costs and expenses, and to make further orders respecting disposition of records and files in the possession of the Custodian, and to require reports and accounts respecting performance of duties by the Custodian and restitution of moneys to assured, and to take any action deemed necessary to effectuate the purposes of this Decree. Jurisdiction over all persons or parties affected by this Decree is reserved for all purposes of effectuating this Decree.

"8. The plaintiff and its sureties are hereby discharged from liability upon temporary injunction bond and interlocutory injunction bond heretofore exacted by this Court and entered into by the plaintiff and its sureties.

"9. It appearing to the Court that separate deposits have been made with the Custodian by Underwriters Grain Association and special deposit made by Pittsburgh Underwriters Department, and separate accounts and reports filed by them embodying an impounding for more than one insurance company, the provisions as to distribution to assured above provided, shall be made in identical manner as respects the said funds; and the payments herein provided to be made to the plaintiff shall, as respects such special funds, be made to the said Underwriters Grain Association and the said Pittsburgh Underwriters Department as if they were a plaintiff herein and subject to like payment to them and to the Trustees as is herein provided respecting payments to insurance companies, except only that payments provided to be made to the plaintiff shall, as respects said funds, be made to said depositors of said funds.

"10. The plaintiff, the defendants, the aforesaid Robert J. Folonie and Charles R. Street as Trustees, and the parties mentioned in paragraph 9 thereof, in open court, consent to the making and entering of this Decree. The above Trustees and the parties mentioned in paragraph 9 hereof enter their several appearances as parties hereto and nominate the present counsel for plaintiff as their counsel herein and they and the parties to this suit consent for themselves and their successors that service of notice of any subsequent proceeding in this suit may be upon the present attorneys of record, or their successors, for the parties.

"Entered this 1st day of February, 1936.

"KIMBROUGH STONE,
Judge of the Circuit Court.

ALBERT L. REEVES,
Judge of the District Court.

MERRILL E. OTIS,
Judge of the District Court."

DECLARATION OF TRUST.

Defendant's Exhibit "4" (I, 40-44) is a declaration of trust dated February 7, 1936, executed by Charles R. Street and Robert J. Folonie. It is as follows:

"The undersigned, Charles R. Street and Robert J. Folonie, do hereby declare themselves trustees of certain funds which now are or may hereafter come to their hands, and certain securities which now are or may come into their possession, under and pursuant to the terms of decree of the District Court of the United States for the Western District of Missouri, Central Division, being a certain decree entered in case in equity, No. 270 in said court, styled "*American Insurance Company, plaintiff,* v. *R. E. O'Malley, et al.,*" and other cases pending in said court being all pending cases in said court, from No. 270 to 426, both inclusive, in which series certain causes were not pending at February 1, 1936, but were theretofore dismissed. As such trustees we have reduced to possession certain securities now in the custody of City National Bank & Trust Company, as follows:

"Receipt Number	Kind of Bonds	Denomination	Par Value
	Treasury Notes B1938, 2 7/8%, due 6-15-38	$100,000.00	$100,000.00
A94024	Treasury Notes B-1939, 1 3/8%, due 12-15-39	100,000.00	400,000.00
87	Home Owners' Loan A 3%, due 5-1-52	100,000.00	100,000.00
549	Treasury Bonds 1955-60 2 7/8%, due 3-15-60	100,000.00	200,000.00
A63940	Treasury Notes A 1938 2 5/8%, due 2-1-38	100,000.00	200,000.00
A76442	Treasury Bonds 3%, due 6-15-48	100,000.00	700,000.00
A65650	Treasury Bonds 1941 3 1/4%, due 8-1-41	100,000.00	600,000.00
A90151	Home Owners' A 3%, due 5-1-52	100,000.00	200,000.00

"And it is anticipated that further sums of money and securities may, in like manner, come to our custody and control, pursuant to such decree and pursuant to decrees which may be entered by the Circuit Court of Cole County, Missouri, in case of *American Constitution Fire Assurance Company* v. *O'Mal-*

ley, or by order of the Supreme Court of Missouri in said cause on appeal.

"Both of the undersigned do declare that they have no personal interest in said fund directly, altho said Robert J. Folonie has a contingent interest therein, arising out of unpaid fees and expenses which may, in the future, be discharged therefrom, for services rendered and to be rendered, and expenditures made and to be made in connection with such litigation.

"Said moneys and securities above mentioned are held in trust for the benefit of interested insurance companies, namely, insurance companies involved in litigation in the courts of Missouri in connection with insurance rates, the general nature whereof is well known to such interested insurance companies so represented by said trustees.

"The conduct of such litigation has been entrusted by various companies involved therein to the conduct and management of Subscribers Actuarial Committee, which is a committee existing and created by interested insurance companies for management of such litigation and who have had the conduct thereof under their supervision. The said committee has a membership which changes from time to time, the present membership thereof consisting of Charles R. Street, chairman; Herbert A. Clark, vice-chairman; George Bell, John C. Harding, Walter D. Williams, Ernest A. Henne and Fred W. Koeckert.

"Said trustees will, out of the moneys in their hands, pay various sums provided in certain Memorandum of Agreement, made May 18, 1935, between Charles R. Street, as agent for stock fire insurance companies, and R. Emmet O'Malley, superintendent of insurance, and witnessed by Robert J. Folonie and John T. Barker, a copy of which is hereto attached. Said trustees will undertake discharging the obligations of such agreement according to their interpretation and understanding thereof, and, in particular, payment of certain sums to the Superintendent of Insurance and his attorneys, as therein prescribed, and will additionally pay therefrom any sums arising by way of costs, fees, and expenses assessed or adj dged by any court in which such matters are pending, securing vouchers for such payments; and for other

payments not so arising out of court orders, judgments, or assessment of costs and fees, will disburse moneys and securities in their hands under direction of Subscribers Actuarial Committee, which directions they will secure from them in writing, to be evidenced by orders or directions for payment upon certification of J. V. Parker, secretary for such committee, or his successor, of action of such committee, or upon the signed order of any two members of such committee, which shall be evidence of the action of such committee in authorizing and directing any payments from such moneys and funds.

"The trustees may convert any of such securities and sell or cause to be sold any of them, and may invest or reinvest the proceeds thereof in their discretion.

"Such trustees shall continue to act until the purposes of the trust are completed, namely, disposition of all financial attributes of such litigation, including not only sums assessed against the companies for costs, fees and expenses which may properly be discharged therefrom, but also such fees, expenses, repayments of loans or other disbursements which may be so certified to them by Subscribers Actuarial Committee in the manner in which certification thereof is above provided.

"The trustees will keep such amount as they deem proper from time to time in bank account, subject to their withdrawal, and, when the purposes of the trust are completed, will distribute the amount remaining under direction of Subscribers Actuarial Committee.

"In the event of the death or written resignation of C. R. Street, or upon some new person being created as chairman of Subscribers Actuarial Committee, the Subscribers Actuarial Committee may designate a successor, and such successor, as a condition of succession, shall cause notice thereof to be given to W. T. Kemper, custodian, or his successor in that position; and upon the death or resignation in writing of Robert J. Folonie, the Subscribers Actuarial Committee shall select a successor, who shall be an attorney at law and who shall, if the said case in the District Court of the United States above mentioned be still pending in any particular, file an entry of appearance in said court and show his succession

to the court and file his appearance therein and submit to the jurisdiction of said court.

"Said trustees declare it to be their intent, after the purposes of this trust are fulfilled, to distribute to insurance companies, or representatives of insurance companies entitled thereto, the remaining part of such fund and secure the approval of Subscribers Actuarial Committee to such proposed distribution as making an appropriate distribution thereof.

"It is here set forth as information for the benefit of all parties concerned that the Subscribers Actuarial Committee is a Committee created by the companies, of all classes, who are subscribers to certain activities in which the companies are individually and jointly interested, one of the functions of the Subscribers Actuarial Committee being representation of all companies associated in litigation concerning matters of general interest, which included and includes the rate litigation in the State of Missouri.

"Said trustees propose to open a bank account with City National Bank & Trust Company and to give directions to said City National Bank & Trust Company from time to time as to the sale, purchase or conversion of securities, and to make withdrawals from deposits by them made in such bank; but said City National Bank & Trust Company shall not be required to inquire into the authority of said trustees in any acts by them so taken, nor justification nor warrant of said trustees in making any payments, nor verify that appropriate authority from Subscribers Actuarial Committee has been secured by such trustees for performance of any act by them.

"In Witness Whereof, we have hereunto affixed our signatures and seals this 7th day of February, A. D. 1936.

(Signed) Charles R. Street (Seal)
(Signed) Robert J. Folonie (Seal)"

Mr. Folonie and Mr. Street executed this declaration of trust after the federal court decree was entered, whereby they took charge of the 30 per cent of the impounded premiums (Folonie, III, 191). Then they proceeded to administer that trust (Folonie, III, 191, 193) in accordance with its terms (Folonie, III, 191), and paid out sums

in accordance with Mr. Folonie's report filed in this court at a later date (Folonie, III, 193).

It was anticipated that the 30 per cent would be adequate for the payment of all expense in connection with the litigation. They did not know what all the expenses might be. It was discussed at the time the settlement was drafted. Mr. Folonie, revealing no figures, discussed that the companies were away behind in paying his compensation. The settlement contemplated settling both the state and the federal cases. The impoundment in Jefferson City had been depleted to pretty nearly $100,000.00 by allowances out of the principal. There were matters of allowances to special masters, referees, injunction bonds, and everything else; so they had no way of knowing at that time just what all the expenses were going to be. But it was contemplated that the 30 per cent would be more than adequate to do it; otherwise they would have set up more. They felt sure it was more than adequate (Berger, III, 395-396).

The 30 per cent aggregated over $2,500,000.00 (Folonie, III, 191). The trustees never paid anything out of this trust fund without a written direction from the Subscribers Actuarial Committee (Folonie, III, 215).

In the early party of March, 1936, the trustees started to make a distribution of 6 per cent out of the 30 per cent. It was the subject of discussion between Mr. Street and Mr. Folonie. They were mutually agreed that they had more money in trust than would be required for probable expenditures in the future. Witness wanted to distribute $1,000,000.00 to the companies to divest themselves of responsibility for the money, and to freeze a profit they had in the bonds which would show quite a material profit if they sold them at that time, and which might disappear if they kept them long enough. Mr. Street opposed this, and said $500,000.00 was enough. They could not tell what they would need the money for. After discussions on that proceeding for some little time, Mr. Folonie gave in to Mr. Street and they agreed on a distribution to the companies of 6 per cent. Checks were drawn for that distribution. Mr. Folonie drew a form, or letter of communication to go with that. He thinks that Mr. Street had the checks made out and sent them to him to sign. Mr. Folonie made a list of the companies and the amounts each one was entitled to, and had it verified. He checked each check to see that the amounts

were correct, and delivered all the checks to Mr. Street for distribution to the companies about March 9. Within ten days after that Mr. Street told Mr. Folonie that he had changed his mind, that he thought it would be advisable to follow witness' suggestion to distribute $1,000,000.00 instead of one-half million dollars, and that the probabilities were that they would lose some of the profit on the bonds if they held them too long; that he would send the checks back to Mr. Folonie and they would cancel them and make new checks (Folonie, III, 193-194).

Mr. Folonie brought over his book in which he keeps all of the trustees' business and everything he thinks has any bearing on it. Mr. Street finally sent back pieces of checks to witness, consisting of the righthand end of each check, showing the number, the amount in dollars (not the amount written out) and in most cases, the tail-end of the names "Street and Folonie" and the word "trustees." Mr. Street said he had destroyed the remainder of those checks. Mr. Folonie had his office go through before he would take any further action, to check up and see that these were all the checks that he had signed, and he found that there were a number of checks missing. He instructed the bookkeeper to paste in some kind of a little slip showing the missing checks, which she did. When witness called Mr. Street's attention to the fact that some of the checks were missing, Mr. Street said that he had delivered a few of the checks to people he happened to see, and the thing to do was to make checks for 11 per cent to those who had not had their checks, and to make checks to each one of those missing for the difference between the amount they had already received and the 11 per cent. That was done, and the checks were made, and on the succeeding pages of witness' book appears each of the checks for the 6 per cent that were outstanding and all of the checks made in the second batch. Those in the second batch for 11 per cent were also dated March 9, 1936, by Mr. Street. He antedated the checks to the date of the former checks. Mr. Folonie did not raise any question about his doing this, and did not think it was important (Folonie, III, 194).

Mr. Folonie and Mr. Henne had heretofore filed in this case a complete accounting up to the date of that account, of the disposition of the 30 per cent impounded fund which stood in the names of Mr. Folonie and Mr. Street and later, Mr. Folonie and Mr. Henne as trustees.

It was made by certified public accountants, checked by Mr. Folonie, and is meticulously correct (Folonie, III, 223).

Plaintiff's Exhibit 329 (III, 437-472) is the report of Robert J. Folonie, surviving trustee, and Ernest A. Henne, successor trustee, showing receipts and disbursements covering the existence of trust from February 7, 1936, to and including the 11th day of February, 1939. The report is dated February 24, 1939, is signed by the surviving trustee and the successor trustee, and is supported by the affidavits of Robert J. Folonie and Ernest A. Henne. Attached thereto is a copy of the declaration of trust signed by Charles R. Street and Robert J. Folonie and the report of Walton, Joplin, Langer & Co., certified public accountants. It is as follows:

"REPORT OF ROBERT J. FOLONIE, SURVIVING TRUSTEE, AND ERNEST A. HENNE, SUCCESSOR TRUSTEE.

The undersigned, Robert J. Folonie, surviving Trustee, and Ernest A. Henne, successor Trustee, submit herewith a report of receipts and disbursements covering the entire time that the Trust herein involved has been in existence, namely, from the 7th day of February, 1936, to and including the 11th day of February, 1939.

The rights and duties of the Trustees are set forth in a certain Declaration of Trust, a true copy of which is attached hereto, marked Exhibit 'A' and made a part hereof. Charles R. Street, one of the Trustees designated under said Declaration of Trust, died on the first day of February, 1938, and the undersigned, Ernest A. Henne, was, on said date, appointed successor Trustee by the Subscribers Actuarial Committee, pursuant to the provisions of the said Declaration of Trust.

The sole and only assets at any time coming into the Trust Estate were securities and moneys transmitted from William T. Kemper, Custodian in the above entitled action, direct to City National Bank and Trust Company, Custodian under said Trust Agreement. The said City National Bank and Trust Company has collected the income upon the securities in the Trust Fund and has, in each instance, sold those securities which were converted into cash. The moneys received have been deposited in said bank to the credit of the Trustees and have been paid out solely on checks signed by both Trustees.

The affidavit of Robert J. Folonie attached hereto certifies to the correctness of said report in all respects, and the affidavit of Ernest A. Henne attached hereto certifies to the correctness of the report as respects all transactions of the Trustees from the first day of February, 1938, to the 11th day of February, 1939.

Dated February 24, 1939.

Respectfully submitted,

(Signed) Robert J. Folonie
Surviving Trustee
(Signed) Ernest A. Henne
Successor Trustee

AFFIDAVIT OF ROBERT J. FOLONIE, ATTACHED TO AND FORMING A PART OF THE REPORT FILED IN FEDERAL COURT.

State of Illinois, County of Cook, ss.

Robert J. Folonie, of lawful age, being first duly sworn, on oath says: I have made detailed examination of the report of Walton, Joplin, Langer & Company, Certified Public Accountants, covering receipts and disbursements of Charles R. Street and Robert J. Folonie, Trustees, and Ernest A. Henne, Successor to Charles R. Street, deceased, which is attached to and made a part of the report of the Trustees. Said report is true in every particular to my personal knowledge.

The Trustees have never, at any time, received any moneys, securities, property, or any other thing of value except as set forth in said audit. All of the securities and moneys shown by said audit to have been received by the Trustees were transmitted directly from W. T. Kemper, Custodian in the above entitled actions, to City National Bank & Trust Company of Chicago, Custodian under the Trust Agreement (Exhibit 'A' attached to the Trustee's Report). All interest upon such securities was collected by City National Bank & Trust Company and credited to the account of the Trustees, and all securities which were converted into cash were sold by City National Bank & Trust Company and the proceeds credited to the account of the Trustees.

All payments from the Trust Funds were paid by checks drawn on City National Bank & Trust Company, signed by Robert J. Folonie and Charles R. Street, Trustees, during the latter's lifetime, and by Robert J. Fo-

lonie and Ernest A. Henne, Trustees, after the death of the said Charles R. Street. The original checks under which all such disbursements were made are now in the possession of the Trustees and were examined by the auditors whose report is attached to the report of the Trustees.

The list of checks set forth in the auditors' report covers every disbursement made by the Trustees at any time and this list correctly sets forth the name of the payee actually receiving the check, the date and amount of each check, and its number. The list of voided checks set forth in said report is true and correct and none of said checks were cashed.

Each check is endorsed by the payee and banks only, except as specifically noted in auditors' report.

Every distribution or payment made by the Trustees to any of the fire insurance companies was made by me with the intent and understanding that the money would be received and retained by such fire insurance company. I never, at any time, had any agreement, express or implied, direct or indirect, that any such payment should be applied by any such fire insurance company in any way, or for any purpose, other than to be retained by such insurance company as its absolute property. No part of any money paid to any fire insurance company was ever returned to the Trustees, nor did any of said companies, at any time after the receipt of any payment from the Trustees, pay any sum of money, or deliver any securities, or thing of value whatsoever to the Trustees. Nor did this affiant receive any money, securities or other thing of value from any of said companies after said payments were made, either as a return of any portion of said payments so made, or otherwise. The only moneys received by this affiant during said period from the Trust Funds, were solely in payment of the charges for legal services made by this affiant and his law partners, and each of said payments is set forth in detail in the auditors' report aforesaid. All of said moneys were received by myself and my partners and no part thereof was paid to any other person. Affiant says that incidental expense of affiant's law firm was reimbursed by Missouri Inspection Bureau, the total of such payments from January 1, 1936, to date, being $1,868.08.

Affiant has no knowledge whatever respecting the supposed fund alleged by the *Amicus Curiae* and the Su-

perintendent of Insurance to have been received by Mr. Street during the year 1936. At some time during the year 1936, C. R. Street presented to affiant a few checks from fire insurance companies, some five to ten, more or less, in number, payable to C. R. Street and affiant, or to C. R. Street and Hicks & Folonie, and requested affiant to endorse such checks to C. R. Street, then stating that it was money which he was returning to, or accounting to the companies for. None of said checks were payable to the Trustees. Neither affiant nor his law firm had any interest in said checks or proceeds thereof, and affiant attached no importance to the circumstance and did not notice and cannot now state the amounts of said checks, the makers, or dates. Affiant has no knowledge as to whether this circumstance is in anywise related to the supposed fund suggested by *Amicus Curiae,* nor has affiant any knowledge as to the disposition made by C. R. Street of said checks, or the proceeds thereof.

Affiant further says that disbursements made by Trustees were on written order of Subscribers Actuarial Committee, in possession of affiant, that no orders, oral or in writing, were given by said Committee to affiant or to knowledge of affiant for any other disbursements than those shown in auditors' report.

Further affiant saith not.

(Signed) Robert J. Folonie

Subscribed and sworn to before me this 24th day of February, 1939.

(Signed) Lauretta A. Gauger
(Seal) Notary Public

My commission expires November 16, 1939.

AFFIDAVIT OF ERNEST A. HENNE ATTACHED TO AND FORMING A PART OF THE REPORT FILED IN FEDERAL COURT.

State of Illinois County of Cook ss.

Ernest A. Henne, of lawful age, being first duly sworn, on oath says: I have carefully examined the report of Walton, Joplin, Langer & Company, Certified Public Accountants, covering receipts and disbursements of Charles R. Street and Robert J. Folonie, Trustees, and Ernest A. Henne, successor Trustee, attached hereto and made a part of the report of the Trustees.

As to that portion of the report covering transactions of the Trustees occurring prior to February 1, 1938, the date of my appointment, the facts stated are true to the best of my knowledge, information and belief. As to the transactions shown in said report occurring after February 1, 1938, the same are true and correct to my personal knowledge.

Further affiant saith not.

(Signed) Ernest A. Henne

Subscribed and sworn to before me this 24th day of February, 1939.

(Signed) Lawrence J. Lawson
Notary Public

(Seal)

My commission expires March 12, 1939."

(Note: The declaration of trust is here set out in full.)

"WALTON, JOPLIN, LANGER & Co.
Certified Public Accountants
231 South LaSalle Street
Chicago

John A. Stolp, C. P. A.
Edw. Wm. Krueger, C. P. A.
Walter H. Rohe, C. P. A.

Members
American Institute
Of Accountants
National Association
Cost Accountants

We have made an examination of the books and records of Robert J. Folonie (C. R. Street, Deceased February 1, 1938, E. A. Henne, Successor) Trustees under a certain declaration of trust dated February 7, 1936 and present herewith the following statments:

Exhibit A, Summary Statement of Cash Receipts and Disbursements, February 7, 1936 to February 11, 1939

" B, Detailed Statement of Cash Receipts, February 7, 1936 to February 11, 1939

" C, Detailed Statement of Cash Disbursements, February 7, 1936 to February 11, 1939

" D, Statement of Securities and Cash Received from W. T. Kemper, Custodian and Total Collections, Realized there-

from by Trustees, February 7, 1936 to February 11, 1939

" E, Statement of Distributions to Insurance Companies.

In connection with our examination we found that all income due from securities was properly collected.

We examined cancelled checks for all disbursements. The disbursements were further supported by receipted statements except as to the payment of $197.70 to Chas. W. Hermann, Jr. and except as to payments to insurance companies which, however, were evidenced by the cancelled checks. The cancelled checks were endorsed only by payees and banks except as to certain checks to Robert J. Folonie which were endorsed by McKinney, Folonie & Grear, and check No. 1 to R. E. O'Malley, Superintendent of Insurance, Missouri, which was endorsed by stamp as follows:

'Pay to the order of Richard R. Nacy, State Treasurer for Deposit only February 20, 1936 Insurance Department of Missouri R. E. O'Malley, Superintendent of Insurance.'

'Pay to the order of Central Missouri Trust Co. Jefferson City, Missouri February 21, 1936, Richard R. Nacy, Treasurer of Missouri.'

Authorizations from the Subscribers Actuarial Committee directing the payment of all disbursements are on file with the trustees. We made no verification of the authenticity of such authorizations.

The City National Bank and Trust Company of Chicago was the sole depository of the trustees. All receipts and disbursements as detailed in Exhibits B and C were checked with the bank's original records at the office of the bank, and we hereby certify that the receipts and disbursements as detailed in Exhibits B and C correspond with the records of the bank in all respects and that there are no other receipts or disbursements shown by the bank's records with the following exceptions:

On May 25, 1936 the bank's records showed a credit of $50,000.00 and a debit of $50,000.00 on the same date reversing the previous entry. These entries on the bank's records do not appear on the trustees' books nor in the detailed statements of cash receipts and disbursements (Exhibits B and C). On May 25, 1936 the trustees deposited a check for $50,000.00 received from W. T. Kem-

per, Custodian. The bank called attention to the fact that the exchange charge on this check would be a considerable item and suggested that the check be put through as a collection item. The bank then reversed the credit entry for $50,000.00 and on May 26, 1936 credited the trustees' account with $49,999.90, representing the collection on the $50,000.00 check less a collection charge of ten cents. The authenticity of these entries was evidenced by the collection memorandum in the bank's files for the credit of $49,999.90 which stated thereon, 'Deposited May 25, 1936, charged back and entered for collection May 25, 1936.'

In Exhibit C there are listed a large number of voided checks among check numbers 7 to 147, inclusive. The Subscribers Actuarial Committee originally directed the trustees to make a distribution of 6% of impounded premiums to the insurance companies as of March 9, 1936. Checks in this amount were made out to the insurance companies. The Subscribers' Actuarial Committee then revoked this order and directed a payment of 11% of impounded premiums to the insurance companies. The checks for the 6% payment were then voided except in the case of twelve checks which were delivered to the insurance companies, and in those cases the insurance companies received a further check in the amount of 5% of impounded premiums to give them a total distribution of 11% as of March 9, 1936. Where insurance companies received two checks for the 11% distribution the checks are cross-referenced in Exhibit C.

At February 11, 1939 the trustees had received an authorization from the Subscribers' Actuarial Committee approving the payment of $20,000.00 to Morrison, Nugent, Berger, Byers & Johns for legal services for the year 1938, but payment had not been made for such services at February 11, 1939.

The sole asset of the trustees at February 11, 1939, was cash on deposit in the amount of $120,620.08 as shown in Exhibit A, which amount was certified to by the depository, the City National Bank and Trust Company of Chicago.

(Signed) Walton, Joplin, Langer & Co.

Chicago, Illinois
February 23, 1939."

EXHIBIT A.

PAGE 1.

ROBERT J. FOLONIE (C. R. STREET, DECEASED FEBRUARY 1, 1938, E. A. HENNE, SUCCESSOR) TRUSTEES

Summary Statement of Cash Receipts and Disbursements
February 7, 1936 to February 11, 1939

CASH RECEIPTS:			
On sale of Securities (Exhibit D):			
Par Value	$2,500,000.00		
Premiums received above par	115,179.70		
Accrued Interest	9,383.33	$2,624,563.03	
On collection of Coupons on Securities (Exhibit D)		44,562.50	
Cash collections from W. T. Kemper, Custodian	101,436.67		
Less: Bank Collection Charges	.20	101,436.47	$2,770,562.00
CASH DISBURSEMENTS:			
To R. E. O'Malley, Superintendent of Insurance, in pro rata payment of sum of $200,000.00 payable pursuant to terms of settlement agreement of May 18, 1935		169,440.00	
To John T. Barker in pro rata payment of sum of $500,000.00 payable pursuant to terms of settlement agreement of May 18, 1935		423,600.00	
To Mercantile-Commerce Bank & Trust Co., St. Louis, in payment of note dated December 12, 1935		150,000.00	
To Hicks and Folonie for legal services		95,000.00	
To Robert J. Folonie for legal services		150,000.00	
To McKinney, Folonie and Grear for legal services		55,000.00	
To Morrison, Nugent, Wylder and Berger for legal services		85,000.00	
To Morrison, Nugent, Berger, Byers and Johns for legal services		22,500.00	
To Raglund, Otto and Potter:			
For legal services	20,000.00		
For expenses	313.46	20,313.46	
To Igoe, Carroll and Keefe for legal services		30,000.00	
To David W. Peters:			
For legal services	1,500.00		
For expenses	100.00	1,600.00	
To W. S. Peters for shorthand reporting		470.80	

To Chas. W. Hermann, Jr. for court reporting	197.70	
To Gus G. LeCompte for court reporting	175.00	
To Lawton-Byrne-Bruner Insurance Agency Company for premium payment on bond	1,062.50	
To Fidelity & Deposit Co. for premium payment on injunction bond	458.90	
To W. B. Johnson & Co. for premium payments on appeal bond	500.00	
To City National Bank and Trust Company, Chicago for safekeeping services	1,085.95	
To City National Bank and Trust Company, Chicago for exchange charges	.47	
Carried forward	1,206,404.78	2,770.562.00

EXHIBIT A.

PAGE 2.

Summary Statement of Cash Receipts and Disbursements
February 7, 1936 to February 11, 1939

CASH RECEIPTS brought forward			$2,770,562.00
CASH DISBURSEMENTS brought forward and continued		$1,206,404.78	
To V. Frank Banta for preparation of 1936 Federal income tax return		50.00	
To Walton, Joplin, Langer & Co. for auditing services and preparation of 1937 Federal income tax return		242.50	
To insurance Companies (Exhibit E):			
Mar. 9, 1936 - 11% of impounded premiums	$992,230.69		
Dec. 24, 1937 - 5% of impounded premiums	451,013.95	1,443,244.64	
Total Cash Disbursements			2,649,941.92
Balance on Deposit at City National Bank and Trust Company, Chicago at February 11, 1939			$ 120,620.08

EXHIBIT B.

PAGE 1.

ROBERT J. FOLONIE (C. R. STREET, DECEASED FEBRUARY 1, 1938, E. A. HENNE, SUCCESSOR) TRUSTEES

Detailed Statement of Cash Receipts

February 7, 1936 to February 11, 1939

Date			
Feb. 8, 1936	Proceeds of sale of United States of America 3¼% Treasury Bonds due 8-1-41:		
	Par value	$600,000.00	
	Premium received	50,437.50	
	Accrued interest received 2-1-36 to 2-8-36	379.16	$ 650,816.66
Feb. 8, 1936	Proceeds of sale of United States of America 2-⅞% Treasury Bonds due 3-15-60:		
	Par value	100,000.00	
	Premium received	406.25	
	Accrued interest received 9-15-35 to 2-8-36	1,142.01	101,548.26
Feb. 8, 1936	Proceeds of sale of Home Owners' Loan Corporation, Series "A" Bonds due 5-1-52:		
	Par value	300,000.00	
	Premium received	3,375.00	
	Accrued interest received 11-1-35 to 2-8-36	2,425.00	305,800.00
Mar. 10, 1936	Proceeds of sale of United States of America 2-⅝% Treasury Notes due 2-1-38:		
	Par value	200,000.00	
	Premium received	9,375.00	
	Accrued interest received 2-1-38 to 3-10-36	548.08	209,923.08
Mar. 16, 1936	Collection of March 15, 1936 coupons on $100,000 par value United States of America 2-⅞% Treasury Bonds due 3-15-36		1,437.50
Mar. 18, 1936	Proceeds of sale of United States of America 2-⅞% Treasury Bonds due 3-15-60:		
	Par value	100,000.00	
	Premium received	1,406.25	
	Accrued interest received 3-15-36 to 3-18-36	23.96	101,430.21
Mar. 18, 1936	Proceeds of sale of United States of America 1-⅞% Treasury Notes due 12-15-39:		
	Par value	400,000.00	
	Premium received	4,750.00	
	Accrued interest received 12-15-35 to 3-18-36	1,412.56	406,162.56

EXHIBIT B.

PAGE 2.

Detailed Statement of Cash Receipts
February 7, 1936 to February 11, 1939

Date			
Apr. 14, 1936	Proceeds of sale of United States of America 2-⅞% Treasury Notes due 6-15-38:		
	Par value	$100,000.00	
	Premium received	5,406.25	
	Accrued interest received 12-15-35 to 4-14-36	950.48	$ 106,356.73
May 26, 1936	Check from W. T. Kemper, Custodian	50,000.00	
	Less: Collection charge	.10	49,999.90
June 15, 1936	Collection of June 15, 1936 coupons on $700,000 par value United States of America 3% Treasury Bonds due 6-15-48		10,500.00
June 17, 1936	Check from W. T. Kemper, Custodian	48,000.00	
	Less: Collection charge	.10	47,999.90
Oct. 3, 1936	Check from W. T. Kemper, Custodian		3,436.67
Dec. 15, 1936	Collection of December 15, 1936 coupons on $700,000 par value United States of America 3% Treasury Bonds due 6-15-48		10,500.00
June 15, 1937	Collection of June 15, 1937 coupons on $700,000 par value United States of America 3% Treasury Bonds due 6-15-48		10,500.00
Sept. 3, 1937	Proceeds of sale of United States of America 3% Treasury Bonds due 6-15-48:		
	Par value	50,000.00	
	Premium received	1,750.00	
	Accrued interest received 6-15-37 to 9-3-37	325.00	52,075.00
Nov. 5, 1937	Proceeds of sale of United States of America 3% Treasury Bonds due 6-15-48:		
	Par value	75,000.00	
	Premium received	3,304.69	
	Accrued interest received 6-15-37 to 11-5-37	875.00	79,179.69
Dec. 15, 1937	Collection of December 15, 1937 coupons on $575,000 par value United States of America 3% Treasury Bonds due 6-15-48		8,625.00
Dec. 22, 1937	Proceeds of sale of United States of America 3% Treasury Bonds due 6-15-48:		
	Par value	425,000.00	
	Premium received	22,179.69	
	Accrued interest received 12-15-37 to 12-22-37	247.92	447,427.61

EXHIBIT B.

PAGE 3.

Detailed Statement of Cash Receipts
February 7, 1936 to February 11, 1939

Date			
May 26, 1938	Proceeds of sale of United States of America 3% Treasury Bonds due 6-15-48:		
	Par value	$ 50,000.00	
	Premium received	3,710.94	
	Accrued interest received 12-15-37 to 5-26-38	670.83	$ 54,381.77
June 15, 1938	Collection of June 15, 1938 coupons on $100,000 par value United States of America 3% Treasury Bonds due 6-15-48		1,500.00
Dec. 15, 1938	Collection of December 15, 1938 coupons on $100,000 par value United States of America 3% Treasury Bonds due 6-15-48		1,500.00
Feb. 2, 1939	Proceeds of sale of United States of America 3% Treasury Bonds due 6-15-48:		
	Par value	100,000.00	
	Premium received	9,078.13	
	Accrued interest received 12-15-38 to 2-2-39	383.33	109,461.46
	Total Receipts for the Period		$2,770,562.00

EXHIBIT C.

PAGE 1.

ROBERT J. FOLONIE (C. R. STREET, DECEASED FEBRUARY 1, 1938, E. A. HENNE, SUCCESSOR) TRUSTEES

Detailed Statement of Cash Disbursements

February 7, 1936 to February 11, 1939

Check Number	Date			
1	Feb. 10, 1936	To R. E. O'Malley, Superintendent of Insurance, Missouri, in pro rata payment of sum of $200,000 payable pursuant to terms of settlement agreement of May 18, 1935		$ 169,440.00
2	Feb. 10, 1936	To John T. Barker in pro rata payment of sum of $500,000 payable pursuant to terms of settlement agreement of May 18, 1935		423,600.00
3	Feb. 17, 1936	To Lawton-Byrne-Bruner Insurance Agency Company for premium payment on bond		1,062.50
4	Feb. 17, 1936	To Fidelity & Deposit Co. for premium payments on injunction bond		458.90
5	Mar. 6, 1936	To Hicks & Folonie for 1933 and 1934 legal services		95,000.00
6	Mar. 6, 1936	To David W. Peters		1,600.00
		For legal services	$ 1,500.00	
		For expenses	100.00	
			$ 1,600.00	
		Distribution to Insurance Companies, representing a 11% payment of impounded premiums:		
7		Voided		
8		"		
9		"		
10		"		
11		"		
12		"		
13		"		
14		"		
15		"		
16		"		
17		"		
18		"		
19		"		
20		"		
21		"		
22		"		
23		"		
24		"		
25		"		

EXHIBIT C.

PAGE 2.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number-	Date		
26		Voided	
27		"	
28		"	
29		"	
30		"	
31	Mar. 9, 1936	Concordia Fire Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 172)	$ 3,429.89
32		Voided	
33		"	
34		"	
35		"	
36		"	
37		"	
38		"	
39		"	
40		"	
41		"	
42		"	
43	Mar. 9, 1936	Fire Association of Philadelphia (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 184)	4,625.84
44		Voided	
45	Mar. 9, 1936	Firemens Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 186)	7,214.88
46		Voided	
47		"	
48		"	
49	Mar. 9, 1936	Girard Fire & Marine Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 190)	2,184.30
50		Voided	
51		"	
52		"	
53		"	
54		"	
55		"	
56		"	
57		"	
58		"	
59		"	
60		"	

EXHIBIT C.

PAGE 3.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date		
61		Voided	
62		"	
63		"	
64		"	
65		"	
66		"	
67		"	
68		"	
69		"	
70	Mar. 9, 1936	Lumbermen's Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 211)	$ 1,928.10
71		Voided	
72		"	
73	Mar. 9, 1936	Mechanics Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 214)	464.59
74		Voided	
75		"	
76		"	
77	Mar. 9, 1936	Mercury Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 218)	1,596.45
78		Voided	
79	Mar. 9, 1936	Milwaukee Mechanics Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 220)	4,065.27
80	Mar. 9, 1936	National Ben Franklin Fire Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 221)	1,631.92
81		Voided	
82		"	
83		"	
84		"	
85		"	
86		"	
87		"	
88		"	
89		"	
90		"	
91		"	
92		"	

EXHIBIT C.

PAGE 4.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date		
93		Voided	
94		"	
95		"	
96		"	
97		"	
98		"	
99		"	
100		"	
101		"	
102		"	
103		"	
104		"	
105		"	
106		"	
107		"	
108		"	
109		"	
110		"	
111	Mar. 9, 1936	Reliance Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 252)	$ 1,254.82
112		Voided	
113		"	
114		"	
115		"	
116	Mar. 9, 1936	St. Paul Fire & Marine Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 257)	4,946.14
117		Voided	
118		"	
119		"	
120		"	
121		"	
122		"	
123		"	
124		"	
125		"	
126		"	
127		"	
128		"	
129		"	
130		"	
131		"	

EXHIBIT C.

PAGE 5.

Detailed Statement of Cash Disbursements February 7, 1936 to February 11, 1939

Check Number	Date					
132				Voided		
133				"		
134				"		
135				"		
136				"		
137						
138	Mar.	9,	1936	Victory Insurance Co. (This check represents a 6% distribution; balance of 5% on this distribution paid by Check No. 279)	$	757.35
139				Voided		
140				"		
141				"		
142				"		
143				"		
144				"		
145				"		
146				"		
147						
148	Mar.	9,	1936	American Insurance Co.		19,568.80
149	"	"	"	Agricultural Insurance Co.		4,489.97
150	"	"	"	Aetna Insurance Co.		23,820.38
151	"	"	"	Alliance Insurance Co.		2,370.35
152	"	"	"	American Alliance Insurance Co.		8,786.94
153	"	"	"	American Central Insurance Co.		16,694.87
154	"	"	"	American Eagle Fire Insurance Co.		5,192.61
155	"	"	"	American Union Insurance Co.		2,766.32
156	"	"	"	Atlas Assurance Co.		4,750.18
157	"	"	"	Automobile Insurance Co.		11,699.43
158	"	"	"	Bankers & Shippers Insurance Co.		4,534.14
159	"	"	"	Boston Insurance Co.		11,551.21
160	"	"	"	British American Assurance Co.		1,192.82
161	"	"	"	Caledonian Insurance Co.		1,090.12
162	"	"	"	California Insurance Co.		2,151.96
163	"	"	"	Camden Fire Insurance Association		5,063.50
164	"	"	"	Chicago Fire & Marine Insurance Co.		1,137.83
165	"	"	"	Citizens Insurance Co.		6,076.83
166	"	"	"	City of New York Insurance Co.		5,876.64
167	"	"	"	Columbia Insurance Co.		418.21
168	"	"	"	Columbia Fire Insurance Co.		1,813.06
169	"	"	"	Commerce Insurance Co.		850.36
170	"	"	"	Commercial Union Assurance Co.		7,465.14
171	"	"	"	Commercial Union Fire Insurance Co.		3,046.33
172	"	"	"	Concordia Fire Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 31)		2,858.24

EXHIBIT C.

PAGE 6.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
173	Mar.	9,	1936	Connecticut Fire Insurance Co.	$11,025.92
174	"	"	"	Continental Insurance Co.	31,518.13
175	"	"	"	County Fire Insurance Co.	570.98
176	"	"	"	Detroit Fire & Marine Insurance Co.	1,974.34
177	"	"	"	Dubuque Fire & Marine Insurance Co.	6,400.91
178	"	"	"	Eagle Fire Insurance Co. of N. Y.	1,972.52
179	"	"	"	Eagle Star & British Dominion Insurance Co.	2,262.87
180	"	"	"	East & West Insurance Co.	2,865.63
181	"	"	"	Equitable Fire & Marine Insurance Co.	3,929.33
182	"	"	"	Federal Union Insurance Co.	1,416.39
183	"	"	"	Fidelity-Phenix Fire Insurance Co.	37,036.10
184	"	"	"	Fire Association of Philadelphia (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 43)	3,854.86
185	"	"	"	Firemen's Fund Insurance Co.	12,626.26
186	"	"	"	Firemen's Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 45)	6,012.40
187	"	"	"	First American Fire Insurance Co.	2,867.80
188	"	"	"	Franklin Fire Insurance Co.	17,742.14
189	"	"	"	Franklin National Insurance Co.	2,086.43
190	"	"	"	Girard Fire & Marine Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 49)	1,820.25
191	"	"	"	Glens Falls Insurance Co.	5,479.88
192	"	"	"	Globe & Rutgers Fire Insurance Co.	6,276.18
193	"	"	"	Granite State Fire Insurance Co.	1,799.52
194	"	"	"	Great American Insurance Co.	24,115.60
195	"	"	"	Guaranty Fire Insurance Co.	638.76
196	"	"	"	Hanover Fire Insurance Co.	9,056.26
197	"	"	"	Hartford Fire Insurance Co.	52,424.01
198	"	"	"	Home Insurance Co.	72,481.94
199	"	"	"	Home Fire & Marine Insurance Co.	2,770.30
200	"	"	"	Hudson Insurance Co.	1,354.47
201	"	"	"	Imperial Assurance Co.	2,339.71
202	"	"	"	Importers & Exporters Insurance Co.	5,460.96
203	"	"	"	Insurance Company of North America	19,587.45
204	"	"	"	Insurance Company of State of Pennsylvania	4,128.71
205	"	"	"	Law Union & Rock Insurance Co.	2,876.79
206	"	"	"	Liverpool & London & Globe Insurance Co.	19,023.87
207	"	"	"	London Assurance Corporation	6,594.00

EXHIBIT C.

PAGE 7.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
208	Mar.	9,	1936	London & Lancashire Insurance Co.	$ 8,255.62
209	"	"	"	London & Provincial Marine & General Insurance Co.	1,061.92
210	"	"	"	London & Scottish Assurance Corp.	1,481.32
211	"	"	"	Lumbermens Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 70)	1,606.75
212	"	"	"	Manhattan Fire & Marine Insurance Co.	1,092.73
213	"	"	"	Massachusetts Fire & Marine Insurance Co.	1,719.88
214	"	"	"	Mechanics Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 73)	387.17
215	"	"	"	Merchants Insurance Co.	2,223.98
216	"	"	"	Merchants Fire Assurance Corporation	6,628.58
217	"	"	"	Merchants Fire Insurance Co.	1,335.21
218	"	"	"	Mercury Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 77)	1,330.37
219	"	"	"	Michigan Fire & Marine Insurance Co.	1,741.83
220	"	"	"	Milwaukee Mechanics Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 79)	3,387.72
221	"	"	"	National Ben Franklin Fire Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 80)	1,359.93
222	"	"	"	National Fire Insurance Co.	33,870.37
223	"	"	"	National Liberty Insurance Co.	9,372.85
224	"	"	"	National Reserve Insurance Co.	1,487.34
225	"	"	"	National Security Fire Insurance Co.	1,214.82
226	"	"	"	National Union Fire Insurance Co.	8,841.79
227	"	"	"	Newark Fire Insurance Co.	3,137.38
228	"	"	"	New England Fire Insurance Co.	1,754.40
229	"	"	"	New Hampshire Fire Insurance Co.	8,435.27
230	"	"	"	New Jersey Insurance Co.	3,085.00
231	"	"	"	New York Underwriters Insurance Co.	16,602.45
232	"	"	"	Niagara Fire Insurance Co.	5,496.24
233	"	"	"	Northern Assurance Co. Ltd.	9,321.75
234	"	"	"	Northern Insurance Co.	8,006.26
235	"	"	"	North River Insurance Co.	7,405.25

EXHIBIT C.

PAGE 8.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
236	Mar.	9,	1936	Northwestern Fire & Marine Insurance Co.	$ 1,441.86
237	"	"	"	Norwich Union Fire Insurance Society, Ltd.	4,843.02
238	"	"	"	Old Colony Insurance Co.	1,862.52
239	"	"	"	Orient Insurance Co.	7,713.73
240	"	"	"	Pacific Fire Insurance Co.	3,524.78
241	"	"	"	Palatine Insurance Co., Ltd.	3,672.23
242	"	"	"	Patriotic Insurance Co.	548.49
243	"	"	"	Philadelphia Fire & Marine Insurance	5,617.05
244	"	"	"	Phoenix Assurance Co., Ltd.	8,503.43
245	"	"	"	Phoenix Insurance Co.	13,258.61
246	"	"	"	Central States Fire Insurance Co.	3,695.33
247	"	"	"	Minneapolis Fire & Marine Insurance Co.	2,482.83
248	"	"	"	Presidential Fire & Marine Insurance Co.	390.12
249	"	"	"	Providence Washington Insurance Co.	4,810.80
250	"	"	"	Provident Fire Insurance Co.	847.40
251	"	"	"	Queen Insurance Co. of America	11,323.14
252	"	"	"	Reliance Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 111)	1,045.68
253	"	"	"	Rhode Island Insurance Co.	5,825.77
254	"	"	"	Royal Exchange Assurance	12,066.93
255	"	"	"	Royal Insurance Co. Ltd.	10,779.72
256	"	"	"	Safeguard Insurance Co.	1,089.87
257	"	"	"	St. Paul Fire & Marine Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 116)	4,121.78
258	"	"	"	Scottish Union & National Insurance Co.	9,711.92
259	"	"	"	Security Insurance Co.	6,513.65
260	"	"	"	Sentinel Fire Insurance Co.	2,270.88
261	"	"	"	Springfield Fire & Marine Insurance Co.	29,040.25
262	"	"	"	Standard Fire Insurance Co.	2,949.23
263	"	"	"	Standard Fire Insurance Co.	6,360.26
264	"	"	"	Star Insurance Co. of America	3,160.40
265	"	"	"	State Assurance Co. Ltd.	1,133.37
266	"	"	"	Stuyvesant Insurance Co.	2,577.12
267	"	"	"	Sun Insurance Office, Ltd.	7,900.33
268	"	"	"	Superior Fire Insurance Co.	2,233.47
269	"	"	"	Svea Fire & Life Insurance Co.	1,425.41
270	"	"	"	Tokio Marine & Fire Insurance Co.	3,955.30
271	"	"	"	Transcontinental Insurance Co.	1,465.72
272	"	"	"	Travelers Fire Insurance Co.	19,224.06

EXHIBIT C.

PAGE 9.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date					
273	Mar.	9,	1936	Twin City Fire Insurance Co.	$ 1,084.05	
274	"	"	"	Union Assurance Society, Ltd.	1,689.17	
275	"	"	"	Union Fire Insurance Co.	1,746.00	
276	"	"	"	United Firemens Insurance Co.	236.25	
277	"	"	"	United States Fire Insurance Co.	16,718.31	
278	"	"	"	United States Merchants & Shippers Insurance Co.	921.80	
279	"	"	"	Victory Insurance Co. (This check represents a 5% distribution; balance of 6% on this distribution paid by Check No. 138)	631.12	
280	"	"	"	Westchester Fire Insurance Co.	7,848.29	
281	"	"	"	Western Assurance Co.	2,036.24	
282	"	"	"	Western Fire Insurance Co.	3,732.60	
283	"	"	"	World Fire & Marine Insurance Co.	2,561.93	
284	"	"	"	Yorkshire Insurance Co.	4,340.45	
285	"	"	"	Mechanics & Traders Insurance Co.	3,618.73	
286	"	"	"	Potomac Insurance Co.	5,391.63	
287	"	"	"	Underwriters Grain Association	4,556.16	
288	"	"	"	Pittsburgh Underwriters	329.86	
				Total distribution to Insurance Companies on first distribution		992,230.69
289	Apr.	8,	1936	To W. S. Peters for shorthand reporting		470.80
290	"	10,	"	To Morrison Nugent, Wylder & Berger for legal services		20,000.00
291	"	15,	"	To Mercantile-Commerce Bank & Trust Co., St. Louis, in payment of note dated December 12, 1935		150,000.00
292	May	14,	"	To W. B. Johnson & Co. for premium payment on appeal bond		250.00
293	"	"	"	To City National Bank and Trust Company, Chicago for safekeeping services to May 5, 1936		187.50
294	Aug.	10,	1936	To City National Bank and Trust Company, Chicago for safekeeping services to August 5, 1936		131.25
295				Missing		
(1)	Oct.	3,	"	To City National Bank and Trust Company, Chicago for exchange charge		.47
296	"	24,	"	To Robert J. Folonie on account, 1935 legal services		50,000.00
297	"	24,	"	To Morrison, Nugent, Wylder & Berger for balance due on 1935 legal services		40,000.00
298	Nov.	13,	"	To City National Bank and Trust Company, Chicago for safekeeping services to November 5, 1936		131.25

(1) Bank memo charge.

EXHIBIT C.

PAGE 10.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
299	Feb.	12, 1937	To City National Bank and Trust Company, Chicago for safekeeping services to February 5, 1937		131.25
300	Mar.	9, 1937	To Ragland, Otto & Potter		15,313.46
			For legal services	$15,000.00	
			For expenses	313.46	
				$15,313.46	
(1)	Apr.	27, "	To Chas. W. Hermann, Jr. for court reporting		197.70
(1)	May	17, "	To City National Bank and Trust Company, Chicago for safekeeping services to May 5, 1937		131.25
303	June	17, "	To W. B. Johnson & Co. for premium payment on appeal bond		250.00
304	"	17, "	To V. Frank Banta for preparation of 1936 Federal Income Tax Return		50.00
305	July	6, "	To Walton, Joplin, Langer & Co. for audit of trustees' books to March 18, 1937		50.00
306	Aug.	5, "	To Morrison, Nugent, Wylder & Berger for 1936 legal services		25,000.00
304	"	20, "	To Ragland, Otto & Potter for balance due on 1935 and 1936 legal services		5,000.00
305	"	23, "	To City National Bank and Trust Company for safekeeping services to August 5, 1937		131.25
307	Sept.	7, "	To Robert J. Folonie on account 1935 and 1936 legal services		50,000.00
306	"	7, "	To Igoe, Carroll & Keefe for 1935 and 1936 legal services		15,000.00
(1)	Oct.	1, "	To Gus G. LeCompte, court reporter, for preparation of bill of exceptions		175.00
(1)	Nov.	10, "	To City National Bank and Trust Company for safekeeping services to November 5, 1937		121.88
310	Dec.	15, "	To Robert J. Folonie for balance due on 1935 and 1936 legal services		50,000.00
			Distributions to Insurance Companies, representing a 5% payment of impounded premiums:		
311	Dec.	24, 1937	Agricultural Insurance Co.	2,040.90	
312	"	" "	American Insurance Co.	8,894.91	

(1) Checks carried no numbers. Probably should have been numbered 301, 302, 308 and 309.

EXHIBIT C.

PAGE 11.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
313	Dec.	24,	1937	Aetna Insurance Co.	$10,827.45
314	"	"	"	Alliance Insurance Co.	1,077.43
315	"	"	"	American Alliance Insurance Co.	3,994.06
316	"	"	"	American Central Insurance Co.	7,588.58
317	"	"	"	American Eagle Fire Insurance Co.	2,360.28
318	"	"	"	American Union Insurance Co.	1,257.42
319	"	"	"	Atlas Insurance Co.	2,159.17
320	"	"	"	Automobile Insurance Co.	5,317.92
321	"	"	"	Bankers & Shippers Insurance Co.	2,060.97
322	"	"	"	Boston Insurance Co.	5,250.55
323	"	"	"	British American Assurance Co.	542.19
324	"	"	"	Caledonian Insurance Co.	495.51
325	"	"	"	California Insurance Co.	978.16
326	"	"	"	Camden Fire Insurance Co.	2,301.59
327	"	"	"	Chicago Fire & Marine Insurance Co.	517.20
328	"	"	"	Citizens Insurance Co.	2,762.20
329	"	"	"	City of New York Insurance Co.	2,671.20
330	"	"	"	Columbia Insurance Co.	190.09
331	"	"	"	Columbia Fire Insurance Co.	824.12
332	"	"	"	Commerce Insurance Co.	386.53
333	"	"	"	Commercial Union Assurance Co.	3,393.24
334	"	"	"	Commercial Union Fire Insurance Co.	1,384.69
335	"	"	"	Concordia Fire Insurance Co. .	2,858.24
336	"	"	"	Connecticut Fire Insurance Co.	5,011.78
337	"	"	"	Continental Insurance Co.	14,326.42
338	"	"	"	County Fire Insurance Co.	259.54
339	"	"	"	Detroit Fire & Marine Insurance Co.	897.43
340	"	"	"	Dubuque Fire & Marine Insurance Co.	2,909.50
341	"	"	"	Eagle Fire Insurance Co. of N. Y.	896.60
342	"	"	"	Eagle Star & British Dominion Insurance Co.	1,028.58
343	"	"	"	East & West Insurance Co.	1,302.56
344	"	"	"	Equitable Fire & Marine Insurance Co.	1,786.06
345	"	"	"	Federal Union Insurance Co.	643.81
346	"	"	"	Fidelity-Phenix Fire Insurance Co.	16,834.59
347	"	"	"	Fire Association of Philadelphia	3,854.86
348	"	"	"	Firemans Fund Insurance Co.	5,739.21
349	"	"	"	Firemens Insurance Co.	6,012.40
350	"	"	"	First American Fire Insurance Co.	1,303.54
351	"	"	"	Franklin Fire Insurance Co.	8,064.61
352	"	"	"	Franklin National Insurance Co.	948.38
353	"	"	"	Girard Fire & Marine Insurance Co.	1,820.25
354	"	"	"	Glens Falls Insurance Co.	2,490.85
355	"	"	"	Globe & Rutgers Fire Insurance Co.	2,852.81
356	"	"	"	Granite State Fire Insurance Co.	817.97
357	"	"	"	Great American Insurance Co.	10,961.64

EXHIBIT C.

PAGE 12.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
358	Dec.	24,	1937	Guaranty Fire Insurance Co.	$ 290.34
359	"	"	"	Hanover Fire Insurance Co.	4,116.48
360	"	"	"	Hartford Fire Insurance Co.	23,829.09
361	"	"	"	Home Insurance Co.	32,946.34
362	"	"	"	Home Fire & Marine Insurance Co.	1,259.23
363	"	"	"	Hudson Insurance Co.	615.67
364	"	"	"	Imperial Assurance Co.	1,063.50
365	"	"	"	Importers & Exporters Insurance Co.	2,482.25
366	"	"	"	Insurance Co. of North America	8,903.39
367	"	"	"	Insurance Co. of State of Pennsylvania	1,876.69
368	"	"	"	Law Union & Rock Insurance Co.	1,307.63
369	"	"	"	The Liverpool & London & Globe Insurance Co. Ltd.	8,647.21
370	"	"	"	London Assurance Corp.	2,997.27
371	"	"	"	London & Lancashire Insurance Co. Ltd.	3,752.55
372	"	"	"	London & Provincial Marine & General Insurance Co.	482.69
373	"	"	"	London & Scottish Assurance Corp.	673.33
374	"	"	"	Lumbermen's Insurance Co.	1,606.75
375	"	"	"	Manhattan Fire & Marine Insurance Co.	496.70
376	"	"	"	Massachusetts Fire & Marine Insurance Co.	781.76
377	"	"	"	Mechanics Insurance Co.	387.16
378	"	"	"	Merchants Insurance Co.	1,010.90
379	"	"	"	Merchants Fire Assurance Corp.	3,012.99
380	"	"	"	Merchants Fire Insurance Co.	606.91
381	"	"	"	Mercury Insurance Co.	1,330.37
382	"	"	"	Michigan Fire & Marine Insurance Co.	791.74
383	"	"	"	Milwaukee Mechanics Insurance Co.	3,387.73
384	"	"	"	National Ben Franklin Fire Insurance Co.	1,359.93
385	"	"	"	National Fire Insurance Co.	15,395.62
386	"	"	"	National Liberty Insurance Co.	4,260.39
387	"	"	"	National Reserve Insurance Co.	676.07
388	"	"	"	National Security Fire Insurance Co.	552.19
389	"	"	"	National Union Fire Insurance Co.	4,019.00
390	"	"	"	Newark Fire Insurance Co.	1,426.08
391	"	"	"	New England Fire Insurance Co.	797.46
392	"	"	"	New Hampshire Fire Insurance Co.	3,834.21
393	"	"	"	New Jersey Insurance Co.	1,402.27
394	"	"	"	New York Underwriters Insurance Co.	7,546.57
395	"	"	"	Niagara Fire Insurance Co.	2,498.29
396	"	"	"	Northern Assurance Co.	4,237.16
397	"	"	"	Northern Insurance Co.	3,639.21
398	"	"	"	North River Insurance Co.	3,366.02
399	"	"	"	Northwestern Fire & Marine Insurance Co.	655.39

EXHIBIT C.

PAGE 13.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date				
400	Dec.	24,	1937	Norwich Union Fire Insurance Co.	$ 2,201.37
401	"	"	"	Old Colony Insurance Co.	846.60
402	"	"	"	Orient Insurance Co.	3,506.24
403	"	"	"	Pacific Fire Insurance Co.	1,602.17
404	"	"	"	Palatine Insurance Co.	1,669.20
405	"	"	"	Patriotic Insurance Co.	249.31
406	"	"	"	Philadelphia Fire & Marine Insurance Co.	2,553.21
407	"	"	"	Phoenix Assurance Co.	3,865.20
408	"	"	"	Phoenix Insurance Co.	6,026.64
409	"	"	"	Central States Fire Insurance Co.	1,679.70
410	"	"	"	Minneapolis Fire & Marine Insurance Co.	1,128.56
411	"	"	"	Presidential Fire & Marine Insurance Co.	177.33
412	"	"	"	Providence Washington Insurance Co.	2,186.73
413	"	"	"	Provident Fire Insurance Co.	385.18
414	"	"	"	Queen Insurance Co.	5,146.88
415	"	"	"	Reliance Insurance Co.	1,045.68
416	"	"	"	Rhode Island Insurance Co.	2,648.08
417	"	"	"	Royal Exchange Assurance Co.	5,484.97
418	"	"	"	Royal Insurance Co.	4,899.87
419	"	"	"	Safeguard Insurance Co.	495.40
420	"	"	"	St. Paul Fire & Marine Insurance Co.	4,121.78
421	"	"	"	Scottish Union & National Insurance Co.	4,414.51
422	"	"	"	Security Insurance Co.	2,960.75
423	"	"	"	Sentinel Fire Insurance Co.	1,032.22
424	"	"	"	Springfield Fire & Marine Insurance Co.	13,200.11
425	"	"	"	Standard Fire Insurance Co.	1,340.56
426	"	"	"	Standard Fire Insurance Co.	2,891.03
427	"	"	"	Star Insurance Co.	1,436.55
428	"	"	"	State Assurance Co.	515.17
429	"	"	"	Stuyvesant Insurance Co.	1,171.42
430	"	"	"	Sun Insurance Office	3,591.06
431	"	"	"	Superior Fire Insurance Co.	1,015.22
432	"	"	"	Svea Fire & Life Insurance Co.	647.91
433	"	"	"	Tokio Marine & Fire Insurance Co.	1,797.87
434	"	"	"	Transcontinental Insurance Co.	666.24
435	"	"	"	Travelers Fire Insurance Co.	8,738.21
436	"	"	"	Twin City Fire Insurance Co.	492.75
437	"	"	"	Union Assurance Society	767.80
438	"	"	"	Union Fire Insurance Co.	793.64
439	"	"	"	United Firemen's Insurance Co.	107.38
440	"	"	"	United States Fire Insurance Co.	7,599.23
441	"	"	"	United States Merchants & Shippers Insurance Co.	419.00
442	"	"	"	Victory Insurance Co.	631.12
443	"	"	"	Westchester Fire Insurance Co.	3,567.40

EXHIBIT C.

PAGE 14.

Detailed Statement of Cash Disbursements
February 7, 1936 to February 11, 1939

Check Number	Date					
444	Dec.	24,	1937	Western Assurance Co.	$ 925.57	
445	"	"	"	Western Fire Insurance Co.	1,696.64	
446	"	"	"	World Fire & Marine Insurance Co.	1,164.51	
447	"	"	"	Yorkshire Insurance Co.	1,972.93	
448	"	"	"	Mechanics & Traders Insurance Co.	1,644.88	
449	"	"	"	Potomac Insurance Co.	2,450.74	
450	"	"	"	Underwriters Grain Association	2,070.98	
451	"	"	"	Pittsburg Underwriters	149.93	
				Total distribution to Insurance Companies on second distribution		451,013.35
1	Apr.	11,	1938	To Walton, Joplin, Langer & Co. for audit of trustees' books to February 1, 1938, special report for second distribution to insurance companies, and preparation of 1937 Federal Income Tax Return		192.50
2	May	18,	"	To City National Bank and Trust Company, Chicago for safekeeping services to May 5, 1938		82.82
3	"	23,	"	To Morrison, Nugent, Berger, Byers & Johns for 1937 legal services		22,500.00
4	"	"	"	To Igoe, Carroll & Keefe for 1937 legal services		15,000.00
5	"	25,	"	To McKinney, Folonie & Grear for 1937 legal services		50,000.00
6	Sept.	6,	"	To City National Bank and Trust Company, Chicago for safekeeping services to August 5, 1938		18.75
7	Nov.	18,	"	To City National Bank and Trust Company, Chicago for safekeeping services to November 5, 1938		18.75
8	Jan.	26,	1939	To McKinney, Folonie & Grear for 1938 legal services		5,000.00
				Total Cash Disbursements for the Period		$2,649,941.35

EXHIBIT D.

ROBERT J. FOLONIE (C. R. STREET, DECEASED FEBRUARY 1, 1938, E. A. HENNE, SUCCESSOR) TRUSTEES

Statement of Securities and Cash Received from W. T. Kemper, Custodian and Total Collections Realized Therefrom by Trustees February 7, 1936 to February 11, 1939

Description	Rate	Maturity	Received from W. T. Kemper, Custodian at Amounts Charged Trustees at Dates of Transmittal: Par Value	Premium	Accrued Interest	Total
U. S. Treasury Notes	2 7/8%	6-15-38	$ 100,000	$ 5,437.50	$ 400.62	$ 105,838.12
U. S. Treasury Notes	1 3/8	12-15-39	$ 400,000	$ 3,125.00	$ 721.31	$ 403,846.31
Home Owners Loan Corp.	3	5-1-52	100,000	937.50	750.00	101,687.50
U. S. Treasury Bonds	2 7/8	3-15-60	200,000	625.00	2,172.22	202,797.22
U. S. Treasury Notes	2 5/8	2-1-38	200,000	9,125.00		209,125.00
U. S. Treasury Bonds	3	6-15-48	700,000	22,312.50	2,683.33	724,995.83
U. S. Treasury Bonds	3 1/4	8-1-41	600,000	49,687.50		649,687.50
Home Owners Loan Corp.	3	5-1-52	200,000	1,875.00	1,500.00	203,375.00
			$2,500,000	$93,125.00	$8,227.48	$2,601,352.48
Cash received from W. T. Kemper, Custodian						101,436.67
Total amount charged Trustees in Securities and Cash						2,702,789.15
Excess realized by Trustees over amount received from Custodian						67,772.85
Total Cash Receipts for the Period						$2,770,562.00

SALES: Date	Par Value	Premium	Accrued Interest	Interest Collected	Total Collections
4-14-36	$ 100,000	$ 5,406.25	$ 950.48	$	$ 106,356.73
3-18-36	400,000	4,750.00	1,412.56		406,162.56
2-8-36	100,000	1,125.00	608.33		101,733.33
2-8-36	100,000	406.25	1,142.01)	1,437.50	204,415.97
3-18-36	100,000	1,406.25	23.96)		
3-10-36	200,000	9,375.00	548.08		209,923.08
9-3-37	50,000	1,750.00	325.00)	43,125.00	785,650.53
11-5-37	75,000	3,304.69	875.00)		
12-22-37	425,000	22,179.69	247.92 (		
5-26-38	50,000	3,710.94	670.83)		
2-2-39	100,000	9,078.13	383.33)		
2-8-36	600,000	50,437.50	379.16		650,816.66
2-8-36	200,000	2,250.00	1,816.67		204,066.67
	$2,500,000	$115,179.70	$9,383.33	$44,562.50	$2,669,125.53
Cash received from W. T. Kemper, Custodian					101,436.67
					2,770,562.20
Less: Bank collection charges					.20
Total Cash Receipts for the Period					2,770,562.00

EXHIBIT E.

PAGE 1.

Robert J. Folonie (C. R. Street, deceased February 1, 1938, E. A. Henne, Successor)
Trustees Statement of Distribution to Insurance Companies

Suit Number	Insurance Company	Impounded Premiums	First Distribution 11%	Second Distribution 5%
270	American Insurance	$ 177,898.21	$ 19,568.80	$ 8,894.91
271	Agricultural Insurance	40,817.91	4,489.97	2,040.90
273	Aetna Insurance	216,548.93	23,820.38	10,827.45
274	Alliance Insurance	21,548.61	2,370.35	1,077.43
275	American Alliance Insurance	79,881.29	8,786.94	3,994.06
276	American Central Insurance	151,771.51	16,694.87	7,588.58
277	American Eagle Fire Insurance	47,205.52	5,192.61	2,360.28
279	American Union Insurance	25,148.39	2,766.32	1,257.42
280	Atlas Assurance	43,183.47	4,750.18	2,159.17
281	Automobile Insurance	106,358.42	11,699.43	5,317.92
282	Bankers & Shippers Insurance	41,219.47	4,534.14	2,060.97
283	Boston Insurance	105,011.03	11,551.21	5,250.55
284	British American Assurance	10,843.79	1,192.82	542.19
286	Caledonian Insurance	9,910.15	1,090.12	495.51
288	California Insurance	19,563.29	2,151.96	978.16
289	Camden Fire Insurance	46,031.80	5,063.50	2,301.59
292	Chicago Fire & Marine Insurance	10,343.90	1,137.83	517.20
293	Citizens Insurance	55,243.91	6,076.83	2,762.20
294	City of New York Insurance	53,424.03	5,876.64	2,671.20
295	Columbia Insurance	3,801.89	418.21	190.09
296	Columbia Fire Insurance	16,482.40	1,813.06	824.12
297	Commerce Insurance	7,730.55	850.36	386.53
298	Commercial Union Assurance	67,864.87	7,465.14	3,393.24
299	Commercial Union Fire Insurance	27,693.88	3,046.33	1,384.69
301	Concordia Fire Insurance	57,164.80	6,288.13	2,858.24
302	Connecticut Fire Insurance	100,235.62	11,025.92	5,011.78
303	Continental Insurance	286,528.44	31,518.13	14,326.42
304	County Fire Insurance	5,190.77	570.98	259.54
305	Detroit Fire & Marine Insurance	17,948.57	1,974.34	897.43
306	Dubuque Fire & Marine Insurance	58,190.05	6,400.91	2,909.50
307	Eagle Fire Insurance of New York	17,931.97	1,972.52	896.60
308	Eagle Star & British Dominions Insurance	20,571.54	2,262.87	1,028.58
309	East & West Insurance	26,051.21	2,865.63	1,302.56
310	Equitable Fire & Marine Insurance	35,721.19	3,929.33	1,786.06
312	Federal Union Insurance	12,876.29	1,416.39	643.81
313	Fidelity Phenix Fire Insurance	336,691.80	37,036.10	16,834.59
314	Fire Association of Philadelphia	77,097.25	8,480.70	3,854.86
315	Fireman's Fund Insurance	114,784.23	12,626.26	5,739.21
316	Fireman's Insurance	120,247.98	13,227.28	6,012.40
317	First American Fire Insurance	26,070.88	2,867.80	1,303.54
	Carried forward	2,698,829.81	296,871.29	134,941.48

EXHIBIT E.

PAGE 2.

Statement of Distributions to Insurance Companies

Suit Number	Insurance Company	Impounded Premiums	First Distribution 11%	Second Distribution 5%
	Brought forward	$2,698,829.81	$296,871.29	$134,941.48
318	Franklin Fire Insurance	161,292.23	17,742.14	8,064.61
319	Franklin National Insurance	18,967.58	2,086.43	948.38
320	Girard Fire & Marine Insurance	36,404.96	4,004.55	1,820.25
321	Glens Falls Insurance	49,817.05	5,479.88	2,490.85
322	Globe & Rutgers Fire Insurance	57,056.22	6,276.18	2,852.81
323	Granite State Fire Insurance	16,359.30	1,799.52	817.97
324	Great American Insurance	219,232.70	24,115.60	10,961.64
325	Guaranty Fire Insurance	5,806.88	638.76	290.34
326	Hanover Fire Insurance	82,329.66	9,056.26	4,116.48
327	Hartford Fire Insurance	476,581.87	52,424.01	23,829.09
328	Home Insurance	658,926.75	72,481.94	32,946.34
329	Home Fire & Marine Insurance	25,184.57	2,770.30	1,259.23
330	Hudson Insurance	12,313.37	1,254.47	615.67
331	Imperial Assurance	21,270.09	2,339.71	1,063.50
332	Importers & Exporters Insurance	49,645.05	5,460.96	2,482.25
334	Insurance Co. of North America	178,067.72	19,587.45	8,903.39
335	Insurance Co. of the State of Pennsylvania	37,533.74	4,128.71	1,876.69
336	Law Union & Rock Insurance	26,152.68	2,876.79	1,307.63
338	Liverpool & London & Globe Ins.	172,944.26	19,023.87	8,647.21
339	London Assurance Corporation	59,945.48	6,594.00	2,997.27
340	London & Lancashire Insurance	75,051.09	8,255.62	3,752.55
341	London & Provincial Marine & General Insurance	9,653.79	1,061.92	482.69
342	London & Scottish Assurance	13,466.59	1,481.32	673.33
343	Lumbermen's Insurance	32,135.01	3,534.85	1,606.75
344	Manhattan Fire & Marine Insurance	9,933.90	1,092.73	496.70
345	Massachusetts Fire & Marine Ins.	15,635.29	1,719.88	781.76
346	Mechanics Insurance	7,743.24	851.76	387.16
347	Merchants Insurance	20,218.04	2,223.98	1,010.90
348	Merchants Fire Assurance	60,259.86	6,628.58	3,012.99
349	Merchants Fire Insurance	12,138.27	1,335.21	606.91
350	Mercury Insurance	26,607.44	2,926.82	1,330.37
351	Michigan Fire & Marine Insurance	15,834.79	1,741.83	791.74
352	Milwaukee Mechanics Insurance	67,754.50	7,452.99	3,387.73
354	National Ben Franklin Fire Insurance	27,198.68	2,991.85	1,359.93
355	National Fire Insurance	307,912.43	33,870.37	15,395.62
356	National Liberty Insurance	85,207.70	9,372.85	4,260.39
357	National Reserve Insurance	13,521.30	1,487.34	676.07
358	National Security Fire Insurance	11,043.86	1,214.82	552.19
359	National Union Fire Insurance	80,379.93	8,841.79	4,019.00
361	Newark Fire Insurance	28,521.63	3,137.38	1,426.08
	Carried forward	5,984,879.31	658,336.71	299,243.94

EXHIBIT E.

PAGE 3.

Statement of Distributions to Insurance Companies

Suit Number	Insurance Company	Impounded Premiums	First Distribution 11%	Second Distribution 5%
	Brought forward	$5,984,879.31	$658,336.71	$299,243.94
362	New England Fire Insurance	15,949.12	1,754.40	797.46
363	New Hampshire Fire Insurance	76,684.24	8,435.27	3,834.21
364	New Jersey Insurance	28,045.44	3,085.00	1,402.27
366	New York Underwriters Insurance	150,931.36	16,602.45	7,546.57
367	Niagara Fire Insurance	49,965.79	5,496.24	2,498.29
369	Northern Assurance	84,743.20	9,321.75	4,237.16
370	Northern Insurance	72,784.14	8,006.26	3,639.21
371	North River Insurance	67,320.42	7,405.25	3,366.02
372	Northwestern Fire & Marine Insurance	13,107.78	1,441.86	655.39
374	Norwich Union Fire Insurance	44,027.49	4,843.02	2,201.37
375	Old Colony Insurance	16,932.00	1,862.52	846.60
376	Orient Insurance	70,124.78	7,713.73	3,506.24
377	Pacific Fire Insurance	32,043.43	3,524.78	1,602.17
378	Palatine Insurance	33,383.92	3,672.23	1,669.20
379	Patriotic Insurance	4,986.23	548.49	249.31
381	Philadelphia Fire & Marine Insurance	51,064.11	5,617.05	2,553.21
382	Phoenix Assurance	77,303.92	8,503.43	3,865.20
383	Phoenix Insurance	120,532.85	13,258.61	6,026.64
383A	Central States Fire Insurance	33,593.90	3,695.33	1,679.70
383B	Minneapolis Fire & Marine Insurance	22,571.18	2,482.83	1,128.56
385	Presidential Fire & Marine Insurance	3,546.55	390.12	177.33
386	Providence Washington Insurance	43,734.55	4,810.80	2,186.73
387	Provident Fire Insurance	7,703.65	847.40	385.18
389	Queen Insurance	102,937.62	11,323.14	5,146.88
390	Reliance Insurance	20,913.67	2,300.50	1,045.68
391	Rhode Island Insurance	52,961.55	5,825.77	2,648.08
392	Royal Exchange Assurance	109,599.40	12,066.93	5,484.97
393	Royal Insurance	97,997.48	10,779.72	4,899.87
394	Safeguard Insurance	9,907.90	1,089.87	495.40
395	St. Paul Fire & Marine Insurance	82,435.64	9,067.92	4,121.78
396	Scottish Union & Nat'l Insurance	88,290.17	9,711.92	4,414.51
397	Security Insurance	59,215.01	6,513.65	2,960.75
398	Sentinel Fire Insurance	2020,644.32	2,270.88	13,200.11
399	Springfield Fire & Marine Insurance	264,002.28	29,040.25	13,200.11
400	Standard Fire Insurance	26,811.21	2,949.23	1,340.56
401	Standard Fire Insurance	57,820.53	6,360.26	2,891.03
402	Star Insurance	28,730.90	3,160.40	1,436.55
403	State Assurance	10,303.33	1,133.37	515.17
404	Stuyvesant Insurance	23,428.35	2,577.12	1,171.42
405	Sun Insurance	71,821.20	7,900.33	3,591.06
	Carried forward	8,233,879.92	905,726.79	411,694.00

EXHIBIT E.

PAGE 4.

Statement of Distributions to Insurance Companies

Suit Number	Insurance Company	Impounded Premiums	First Distribution 11%	Second Distribution 5%
	Brought forward	$8,233.879.92	$905,726.79	$411,694.00
406	Superior Fire Insurance	20,304.31	2,233.47	1,015.22
407	Svea Fire & Life Insurance	12,958.26	1,425.41	647.91
408	Tokio Marine & Fire Insurance	35,957.32	3,955.30	1,797.87
409	Transcontinental Insurance	13,324.72	1,465.72	666.24
410	Travelers Fire Insurance	174,764.18	19,224.06	8,738.21
411	Twin City Fire Insurance	9,855.00	1,084.05	492.75
412	Union Assurance Society	15,356.05	1,689.17	767.80
413	Union Fire Insurance	15,872.72	1,746.00	793.64
414	United Fireman's Insurance	2,147.70	236.25	107.38
415	United States Fire Insurance	151,984.68	16,718.31	7,599.23
416	United States Merchants & Shippers Insurance	8,379.96	921.80	419.00
418	Victory Insurance	12,622.45	1,388.47	631.12
419	Westchester Fire Insurance	71,348.10	7,848.29	3,567.40
420	Western Assurance	18,511.32	2,036.24	925.57
421	Western Fire Insurance	33,932.74	3,732.60	1,696.64
422	World Fire & Marine Insurance	23,290.23	2,561.93	1,164.51
423	Yorksire Insurance	39,458.64	4,340.45	1,972.93
425	Mechanics & Traders Insurance	32,897.51	3,618.73	1,644.88
426	Potomac Insurance	49,014.84	5,391.63	2,450.74
901	Underwriters Grain Association	41,419.67	4,556.16	2,070.98
902	Pittsburg Underwriters Insurance	2,998.69	329.86	149.93
		$9,020,279.01	$992,230.69	$451,013.95

IMPOUNDMENT OF FUNDS AND DISTRIBUTIONS.

During the pendency of the litigation sixteen and two-thirds per cent of the collected premiums were impounded (Darlington, II, 289). It was admitted that the 1937 check for 5 per cent of the impounded premiums was from Street and Folonie as trustees (I, 457).

When the funds were impounded the amount thereof was the difference between what the companies were in fact charging and what they would have been entitled to under the order of the Superintendent of Insurance, including whatever percentage, 15, 20, 25 per cent would be coming to the agents. Witness thinks that, to that extent, they were interested in the impounded funds (Bell, I, 138).

Under the decree the companies received 50 per cent outright from the custodian, less some percentage held for incidental or unforeseen expenses (Henne, I, 49).

Plaintiff's Exhibit 335 (III, 523-531) is a statement of the various accounts taken from the records of this court's custodian as of June 30, 1939. It shows the name of each company having a case in the federal court, the total amount impounded by each company with the custodian, the amount distributed to the companies under the order of February 1, 1936, the amount distributed to the trustees and the residue, or balance. The distribution to the company and distributions to the trustees related to impoundings up to May 1, 1935, and so the balance, or residue, represents impoundings beyond May 1, 1935, or if no impoundings were made beyond 1935, it represents 5 per cent of their previous impoundings. The column "Amount returned to custodian" is the amount paid back by the companies to the custodian in accordance with an order made May 29, 1939. The amounts that each company paid back include those distributed by the custodian to the trustees. The last column shows the dates on which the companies made that restitution.

The amounts distributed to the companies and to the trustees were distributed between February 1 and June, 1936, on various dates. Some of the companies were first sent bonds and then one check was sent and then another check was sent. The custodians just worked on the aggregate with the trustees. The account number as to these companies is the court number, except that account 901 is the Underwriters Grain Association; 902 is the Pittsburgh Underwriters, and 903 is the General Cover Department. They did not have suits pending in the federal court. Witness thinks they are merely impounding accounts, but represent impoundings of policies that were written in which these companies were interested. The Underwriters Grain Association and the Pittsburgh Underwriters made restitution direct to the custodian.

The unnumbered attached sheet is the breakdown on general cover. The restitution to the custodian for the General Cover Department impoundings came back through various companies shown on that last sheet (Campbell, III, 519-522).

Said Exhibit is as follows:

Depts 335-[illegible]

STATEMENT OF VARIOUS ACCOUNTS TAKEN FROM THE CUSTODIAN'S RECORDS AS OF JUNE 30, 1939

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RETURNED TO CUSTODIAN	DATE OF RESTITUTION
270	American Insurance Co.	$197,547.95	$ 88,653.00	$ 55,191.80	$13,689.68	$141,844.80	6-30-39
271	Agricultural Insurance Co.	43,309.73	20,017.00	12,024.82	2,163.89	32,041.82	6-28-39
273	Aetna Insurance Co.	237,806.89	108,274.47	64,964.68	14,134.54	173,239.15	6-27-39
274	Alliance Insurance Co.	22,864.43	10,498.68	6,464.58	1,143.67	16,963.26	6-29-39
275	American Alliance Insurance Co.	87,475.90	39,836.46	23,901.87	5,584.84	63,738.33	6-27-39
276	American Central Insurance Co.	163,840.31	75,741.23	45,531.45	8,199.13	121,272.68	6-29-39
277	American Eagle Fire Ins. Co.	51,319.45	23,602.76	14,161.66	2,740.80	37,764.42	6-29-39
279	American Union Insurance Co.	27,450.31	12,574.20	7,544.52	1,531.48	20,118.72	6-29-39
280	Atlas Assurance Company	47,132.34	21,591.73	12,955.04	2,621.75	34,546.77	6-27-39
281	Automobile Insurance Company	117,074.54	53,179.21	31,907.53	7,139.27	85,086.74	6-27-39
282	Bankers & Shippers Insurance Co.	45,110.41	20,609.74	12,365.84	2,588.89	32,975.58	6-29-39
283	Boston Insurance Company	114,997.03	52,227.75	31,336.65	7,094.38	83,564.40	6-30-39
284	British America Assurance Co.	13,510.42	6,421.90	3,853.14	1,776.67	8,675.04	6-27-39
286	Caledonian Insurance Co.	10,889.94	4,955.07	2,973.05	552.29	7,928.12	6-27-39
288	California Insurance Co.	21,419.35	9,781.65	5,868.99	1,269.04	15,650.64	6-29-39
289	Camden Fire Insurance Association	51,220.06	23,015.90	13,809.54	3,445.98	36,825.44	6-29-39
292	Chicago Fire & Marine Ins. Co.	10,268.71	4,620.90	3,080.61	513.39	7,701.51	6-30-39
293	Citizens Insurance Co.	59,981.66	27,621.96	16,573.17	3,197.12	44,195.13	6-29-39
294	City of New York Insurance Co.	87,514.49	26,557.65	16,027.21	2,876.27	42,584.86	6-27-39

(Continued - Page 2)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RE-TURNED TO CUSTODIAN	DATE OF RESTITUTION
296	Columbia Insurance Company	$ 3,978.74	$ 1,821.51	$ 1,140.57	$ 199.10	$ 2,962.08	6-27-39
298	Columbia Fire Insurance Co.	18,010.65	8,231.41	4,938.85	1,022.61	13,170.26	6-30-39
297	Commerce Insurance Co.	8,296.44	3,837.39	2,302.43	415.20	6,139.82	6-30-39
298	Commercial Union Assurance Co.	73,695.39	33,932.44	20,359.46	3,874.78	54,291.90	6-29-39
299	Commercial Union Fire Insurance Co.	29,586.43	13,680.30	8,308.16	1,480.02	21,988.46	6-29-39
301	Concordia Fire Insurance Co.	62,427.71	28,582.40	17,149.44	3,517.89	45,731.84	6-30-39
302	Connecticut Fire Insurance Co.	107,523.23	49,117.65	29,470.59	6,191.20	78,588.24	6-28-39
303	Continental Insurance Co.	320,983.29	143,264.22	85,958.53	24,404.16	229,222.75	6-29-39
304	County Fire Insurance Co.	5,556.51	2,560.77	1,557.01	277.80	4,117.78	6-27-39
305	Detroit Fire & Marine Ins. Co.	17,912.08	8,060.48	5,373.62	896.48	13,434.10	6-27-39
306	Dubuque Fire & Marine Ins. Co.	63,407.35	29,095.03	17,457.02	3,495.70	46,552.05	6-28-39
307	Eagle Fire Company of New York	19,650.47	8,965.99	5,379.59	1,145.39	14,345.58	6-30-39
308	Eagle Star & British Dom. Ins. Co.	23,164.16	10,285.77	6,171.46	1,734.54	16,457.23	6-30-39
309	East & West Insurance Co.	28,761.10	13,025.60	7,815.36	1,800.48	20,840.96	6-30-39
310	Equitable Fire & Marine Ins. Co.	38,322.04	17,166.62	10,299.97	2,659.48	27,466.59	6-28-39
312	Federal Union Insurance Co.	12,999.50	5,839.20	3,862.89	650.13	9,702.09	6-28-39
313	Fidelity-Phenix Fire Ins. Co.	371,141.05	168,345.90	101,007.54	24,094.25	269,353.44	6-29-39
314	Fire Association of Philadelphia	83,407.26	38,848.63	23,129.18	4,220.97	61,977.81	6-29-39

314	Fire Association of Philadelphia	83,407.26	38,548.63	[illegible]	[illegible]	[illegible]	[illegible]

(Continued - Page 3)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RETURNED TO CUSTODIAN	DATE OF RESTITUTION
315	Fireman's Fund Insurance Co.	$126,453.74	$ 57,392.12	$ 34,435.27	$ 7,790.92	$ 91,827.39	6-30-39
316	Firemen's Insurance Co.	130,795.53	60,123.99	36,074.39	7,086.72	96,198.38	6-30-39
317	First American Insurance Co.	28,330.10	13,035.44	7,821.26	1,490.29	20,856.70	6-29-39
318	Franklin Fire Insurance Co.	178,826.94	80,646.12	48,387.67	12,197.86	129,033.79	6-27-39
319	Franklin National Insurance Co.	21,025.20	9,483.79	5,690.27	1,367.13	15,174.06	6-29-39
320	Girard Fire & Marine Insurance Co.	38,210.73	17,485.12	10,921.49	1,909.47	28,406.61	6-30-39
321	Glens Falls Insurance Co.	54,009.61	24,651.65	14,790.99	3,133.31	39,442.64	6-30-39
322	Globe & Rutgers Fire Ins. Co.	48,478.03	22,142.10	14,170.37	2,422.70	36,312.47	6-27-39
323	Granite State Fire Ins. Co.	17,997.31	8,179.65	4,907.79	1,094.92	13,087.44	6-27-39
324	Great American Insurance Co.	241,675.50	108,995.80	65,397.48	16,050.39	174,393.28	6-27-39
325	Guaranty Fire Insurance Co.	5,808.52	2,614.32	1,742.06	290.31	4,356.38	6-30-39
326	Hanover Fire Insurance Co.	90,841.24	41,129.21	24,677.53	5,726.63	65,806.74	6-30-39
327	Hartford Fire Insurance Co.	534,768.55	238,290.94	142,974.56	40,292.55	381,265.50	6-28-39
328	Home Insurance Company	737,389.31	329,463.38	197,678.03	55,116.66	527,141.41	6-27-39
329	Home Fire & Marine Ins. Co.	27,620.81	12,592.29	7,555.37	1,621.41	20,147.66	6-30-39
330	Hudson Insurance Company	12,313.98	5,543.71	3,691.94	615.77	9,235.65	6-30-39
331	Imperial Assurance Company	23,554.94	10,635.05	6,381.03	1,562.55	17,016.08	6-27-39
332	Importers & Exporters Ins. Co.	49,474.37	22,263.46	14,842.31	2,475.63	37,105.77	6-30-39

(Continued - Page 4)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RE-TURNED TO CUSTODIAN	DATE OF RESTITUTION
334	Ins. Co. of North America	$194,070.33	$ 89,033.86	$ 53,420.32	$10,535.52	$142,454.18	6-29-39
335	Ins. Co. of State of Pennsylvania	41,042.05	18,766.87	11,260.12	2,365.28	30,026.99	6-28-39
336	Law Union & Rock Insurance Co.	28,068.66	12,959.58	7,845.80	1,403.53	20,805.38	6-30-39
338	Liverpool & London & Globe Ins. Co.	187,819.04	86,472.13	51,883.28	9,843.28	138,355.41	6-28-39
339	London Assurance Corporation	66,020.02	29,972.74	17,983.64	4,044.98	47,956.36	6-28-39
340	London & Lancashire Ins. Co.	82,093.70	37,510.59	22,506.36	4,713.03	60,016.95	6-30-39
341	London & Provincial M. & G. Ins.	10,568.81	4,826.90	2,896.14	607.71	7,723.04	6-30-39
342	London & Scottish Assurance Corp.	14,707.27	6,733.30	4,039.98	821.19	10,773.28	6-29-39
343	Lumbermen's Insurance Co.	34,516.19	15,946.76	9,640.50	1,725.10	25,587.26	6-29-39
344	Manhattan Fire & Marine Ins. Co.	10,571.55	4,860.38	2,980.17	529.01	7,840.55	6-28-39
345	Massachusetts Fire & Marine Ins. Co.	16,698.70	7,684.04	4,689.13	835.46	12,373.17	6-27-39
346	Mechanics Insurance Co.	7,753.51	3,491.55	2,322.97	387.74	5,814.52	6-30-39
347	Merchants Insurance Company	23,259.02	10,109.02	6,065.41	2,017.11	16,174.43	6-30-39
348	Merchants Fire Assurance Corp.	67,968.05	30,129.93	18,077.96	5,114.82	48,207.89	6-30-39
349	Merchants Fire Insurance Co.	13,213.94	6,069.14	3,641.48	718.24	9,710.62	6-27-39
350	Mercury Insurance Company	24,706.27	11,417.60	6,868.97	1,235.33	18,286.57	6-30-39
351	Michigan Fire & Marine Ins. Co.	17,515.61	7,915.98	4,749.59	1,118.57	12,665.57	6-29-39
352	Milwaukee Mechanics Ins. Co.	73,815.40	33,877.28	20,326.36	4,039.32	54,203.60	6-30-39

(Continued - Page 8)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RE-TURNED TO CUSTODIAN	DATE OF RESTITUTION
354-	National Ben Franklin Fire Ins.	$ 29,499.47	$ 13,599.34	$ 8,159.60	$ 1,548.87	$ 21,758.94	6-30-39
355	National Fire Insurance Co.	340,461.94	153,956.22	92,373.73	21,636.76	246,329.95	6-29-39
356	National LibertyInsurance Co.	93,154.71	42,603.85	25,562.31	5,282.07	68,166.16	6-27-39
357	National Reserve Insurance Co.	15,041.40	6,760.65	4,056.39	1,014.83	10,817.04	6-28-39
358	National Security Fire Ins. Co.	12,129.46	5,521.93	3,313.16	731.23	8,835.09	6-29-39
359	National Union Fire Insurance Co.	86,161.37	39,771.24	24,113.98	4,308.27	63,885.22	6-29-39
361	Newark Fire Insurance Co.	31,360.53	14,260.82	8,556.49	1,879.93	22,817.31	6-28-39
362	New England Insurance Company	16,698.26	7,687.26	4,612.36	879.86	12,299.62	6-29-39
363	New Hampshire Fire Ins. Co.	84,289.20	38,342.12	23,005.27	5,079.56	61,347.39	6-27-39
364	New Jersey Insurance Co.	31,985.52	14,022.72	8,413.63	2,619.19	22,436.35	6-28-39
366	New York Underwriters Ins. Co.	163,898.58	75,465.68	45,279.41	8,618.80	120,745.09	6-28-39
367	Niagara Fire Insurance Co.	54,321.86	24,982.90	14,989.74	2,866.20	39,972.64	6-29-39
369	Northern Assurance Company	92,943.52	42,371.60	25,422.96	5,525.00	67,794.56	6-29-39
370	Northern Insurance Company	79,814.40	36,392.07	21,835.24	4,660.06	58,227.31	6-30-39
371	North River Insurance Co.	76,075.10	33,660.21	20,196.13	5,957.96	53,856.34	6-27-39
372	Northwestern Fire & Marine Ins. Co.	15,154.47	6,553.89	3,932.33	1,357.47	10,486.22	6-28-39
374	Norwich Union Fire Ins. Society	47,626.59	22,013.75	13,208.25	2,400.35	35,222.00	6-30-39
375	Old Colony Insurance Company	18,579.00	8,464.82	5,078.89	1,100.02	13,543.71	6-30-39

(Continued - Page 6)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RE-TURNED TO CUSTODIAN	DATE OF RESTITUTION
376	Orient Insurance Company	$ 76,728.08	$ 35,062.39	$ 21,037.43	$ 4,389.81	$ 56,099.82	6-30-39
377	Pacific Fire Insurance Co.	34,898.61	16,021.72	9,613.03	1,914.07	25,634.75	6-28-39
378	Palatine Insurance Company	36,666.37	16,691.96	10,015.18	2,190.30	26,707.14	6-29-39
379	Patriotic Insurance Company	6,084.91	2,493.12	1,495.87	731.92	3,988.99	6-28-39
381	Philadelphia Fire & Marine Ins. Co.	55,606.84	25,532.06	15,319.23	3,073.21	40,851.29	6-29-39
382	Phoenix Assurance Company	86,141.71	36,651.96	23,191.18	5,276.73	61,843.14	6-27-39
383	Phoenix Insurance Company	130,243.10	59,055.24	35,433.14	8,142.83	94,488.38	6-26-39
383A	Central States Fire Insurance Co.	36,053.88	16,670.56	10,002.34	1,606.03	26,672.90	6-28-39
383B	Minneapolis Fire & Marine Ins. Co.	22,581.28	10,144.59	6,746.78	1,126.55	16,891.37	6-28-39
385	Presidential Fire & Marine Ins. Co.	3,546.55	1,595.94	1,063.96	177.39	2,659.90	6-30-39
386	Providence Washington Ins. Co.	47,648.86	21,723.24	13,033.94	2,794.07	34,757.18	6-28-39
387	Provident Fire Insurance Co.	8,200.98	3,769.49	2,311.10	410.04	6,080.58	6-30-39
389	Queen Insurance Company	112,715.63	51,468.81	30,861.29	6,502.34	82,350.10	6-28-39
390	Reliance Insurance Company	22,826.15	10,456 84	6,274.10	1,279.74	16,730.94	6-29-39
391	Rhode Island Insurance Co.	57,283.72	26,480.78	15,888.47	2,876.56	42,369.25	6-30-39
392	Royal Exchange Assurance	119,512.48	54,849.70	32,909.82	6,448.69	87,759.52	6-30-39
393	Royal Insurance Company	108,289.52	48,998.74	29,399.24	6,871.06	78,397.98	6-28-39
394	Safeguard Insurance Company	10,792.00	4,953.95	2,972.37	597.94	7,926.32	6-30-39

394	Safeguard Insurance Company	10,792.00	4,953.96	2,972.37			

(Continued - Page 7)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RETURNED TO CUSTODIAN	DATE OF RESTITUTION
395	St. Paul Fire & Marine Ins. Co.	$ 87,878.31	$ 40,512.23	$ 24,580.51	$ 4,391.97	$ 65,092.74	6-30-39
396	Scottish Union & National Ins. Co.	96,492.09	44,145.09	26,487.05	5,450.82	70,632.14	6-29-39
397	Security Insurance Company	64,931.86	29,575.57	17,745.34	3,851.60	47,320.91	6-30-39
398	Sentinel Fire Insurance Co.	22,649.08	10,293.11	6,175.87	1,375.25	16,468.98	6-29-39
399	Springfield Fire & Marine Ins. Co.	285,333.52	129,292.54	77,575.53	18,331.86	206,868.07	6-29-39
400	Standard Fire Ins. Co. of Conn.	29,501.18	13,405.61	8,043.36	1,792.34	21,448.97	6-27-39
401	Standard Fire Ins. Co. of N. J.	63,371.75	28,910.27	17,346.16	3,680.61	46,256.43	6-30-39
402	Star Insurance Co.	31,356.72	14,365.45	8,619.27	1,740.69	22.984.72	6-28-39
403	State Assurance Company	10,029.77	4,513.76	3,008.49	501.68	7,522.25	6-30-39
404	Stuyvesant Insurance Co.	22,935.41	10,321.00	6,880.62	1,147.37	17,201.62	6-29-39
405	Sun Insurance Office	80,583.98	35,910.60	21,546.36	5,932.87	57,456.96	6-28-39
406	Superior Fire Insurance Co.	21,618.62	9,948.43	6,091.29	1,081.75	16,039.72	6-30-39
407	Svea Fire & Life Ins. Co.	12,959.84	5,833.02	3,886.83	648.42	9,719.85	6-30-39
408	Tokio Marine & Fire Ins. Co.	39,778.73	17,978.66	10,787.20	2,531.39	28,765.86	6-30-39
409	Transcontinental Insurance Co.	13,952.66	6,380.85	3,997.42	698.23	10,378.27	6-29-39
410	Travelers Fire Insurance Co.	194,580.76	87,382.09	52,429.25	13,111.86	139,811.34	6-27-39
411	Twin City Fire Insurance Co.	11,320.41	4,927.50	2,956.50	973.92	7,884.00	6-28-39
412	Union Assurance Society	16,513.67	7,632.83	4,606.82	824.82	12,239.65	6-29-39
413	Union Fire Insurance Co.	16,555.03	7,561.30	4,761.82	827.28	12,323.12	6-28-39

(Continued - Page 8)

ACCOUNT NUMBER	NAME OF COMPANY	TOTAL AMOUNT IMPOUNDED	AMOUNT DISTRIBUTED TO COMPANY	AMOUNT DISTRIBUTED TO TRUSTEE	RESIDUE BALANCE	AM'T RE-TURNED TO CUSTODIAN	DATE OF RESTITUTION
414	United Firemen's Insurance Co.	$ 2,446.18	$ 1,073.85	$ 644.31	$ 211.56	$ 1,718.16	6-27-39
415	United States Fire Ins. Co.	168,224.48	75,992.34	45,595.40	10,779.65	121,587.74	6-27-39
416	U. S. Merchants & Shippers Ins. Co.	8,381.57	3,772.27	2,513.91	419.58	6,286.18	6-27-39
418	Victory Insurance Company	12,587.36	5,664.50	3,776.30	628.93	9,440.80	6-29-39
419	Westchester Fire Insurance Co.	78,426.76	35,674.05	21,404.43	4,702.85	57,078.48	6-27-39
420	Western Assurance Company	20,176.81	9,255.66	5,553.40	1,097.67	14,809.06	6-27-39
421	Western Fire Insurance Co.	36,810.14	16,966.37	10,179.82	1,911.65	27,146.19	6-27-39
422	World Fire & Marine Insurance Co.	24,884.15	11,464.94	6,987.07	1,244.63	18,452.01	6-27-39
423	Yorkshire Insurance Company	43,255.69	19,729.32	11,837.59	2,519.69	31,566.91	6-30-39
425	Mechanics & Traders Insurance Co.	35,801.08	16,448.76	9,869.25	1,929.36	26,318.01	6-29-39
426	Potomac Insurance Company	53,683.98	24,507.42	14,704.45	3,096.90	39,211.87	6-30-39
901	Underwriters Grain Association	44,734.17	20,547.96	12,425.90	2,236.96	32,973.86	6-30-39
902	Pittsburgh Underwriters	3,496.87	1,499.35	899.61	330.94	2,398.96	6-30-39
903	General Cover Department	22,071.55	10,126.66	6,217.88	1,103.71	16,344.54	(6-27 to 30-(1939, Incl.
		$9,893,321.08	$4,488,193.84	$2,702,789.15	$613,918.21	$7,190,982.99	

A/c # 903	COMPANY	IMPOUNDING TO 5- 1-36	50% DUE COMPANIES	PAID COS. AFTER 5% DEDUCTION	PAID TRUSTEES 30%
270	American Insurance Co.	$ 592.20	$ 296.10	$ 289.34	$ 177.66
271	Agricultural Insurance Co.	735.16	367.58	359.19	220.54
275	American Alliance Insurance Co.	208.38	104.19	101.81	62.51
283	Boston Insurance Co.	555.53	277.77	271.43	166.66
296	Columbia Fire Insurance Co.	19.58	9.79	9.57	5.87
297	Commerce Insurance Co.	55.78	27.89	27.25	16.73
302	Connecticut Fire Insurance Co.	2,000.32	1,000.16	977.34	600.10
304	County Fire Insurance Co.	.75	.38	.37	.23
308	Detroit Fire & Marine Ins.Co.	.71	.36	.35	.21
310	Equitable Fire & Marine Ins. Co.	1,387.95	693.98	678.15	416.39
321	Glens Falls Insurance Co.	513.76	256.88	251.02	154.13
324	Great American Insurance Co.	1,241.10	620.55	606.39	372.33
326	Hanover Fire Insurance Co.	71.23	35.61	34.80	21.37
345	Massachusetts Fire & Marine Ins. Co.	4.85	2.42	2.37	1.46
350	Mercury Insurance Company	3,710.86	1,855.43	1,813.09	1,113.26
351	Michigan Fire & Marine Insurance Co.	2.82	1.41	1.38	.85
362	New England Fire Insurance Co.	574.60	287.30	280.74	172.38
375	Old Colony Insurance Co.	2.37	1.18	1.15	.71
385	Phoenix Insurance Company	2,422.38	1,211.19	1,183.55	726.71
383A	Central States Fire Insurance Co.	252.78	126.39	123.51	75.83
383B	Minneapolis Fire & Marine Ins. Co.	45.31	22.66	22.14	13.59
386	Providence Washington Insurance Co.	288.07	144.04	140.76	86.42
395	St. Paul Fire & Marine Insurance Co.	500.61	250.30	244.59	150.18
397B	New Haven Underwriters	63.87	31.93	31.20	19.16
398	Sentinel Fire Insurance Co.	58.10	29.05	28.39	17.43
399	Springfield Fire & Marine Insurance Co.	5,417.19	2,708.59	2,646.78	1,625.17
		$20,726.26	$10,363.13	$10,126.66	$ 6,217.88
	Amount deducted to Retain 5% of total impounding.....		$ 236.47		
			$10,126.66		

Defendant's Exhibit 335 (III, 523) does not purport to show any distribution as to policyholders. The amount due to policyholders including their portion of the accretions to the fund was set aside in a trust fund in the Commerce Trust Company immediately following the decree. Distributions to the policyholders have been made out of that fund (Campbell, III, 532).

There is also a portion of the accretions that would have belonged to the companies on hand, none of which has been distributed to the companies. Expenses of making restitution to the policyholders have been paid out of that fund; so that it has been gradually diminished, but the amount of that fund does not appear on this exhibit. The companies got no portion of the accretion, consequently this exhibit just deals with the principal amounts that have been paid out to the companies (Campbell, III, 532) and reimbursed by them to the custodian.

As of August 31. 1939, the custodian had on hand a surplus of $332,517.85, representing unexpended accretions, which figure was arrived at by the sale of securities and the charge made to the insurance companies of the profits on the bonds mailed to them, and the interest in cash taken in (Campbell, III, 532-533).

The custodian still has bonds on hands. The figure does not include accretions on those bonds. This is an actual figure, not including the paper profit. The surplus account would be higher if they sold the bonds that they now have on hand (Campbell, III. 533). That would require setting up a book figure for what they considered to be the actual value of the securities as of this date.

When the bonds were distributed to the companies they were distributed at their market value as of the day they were shipped. That is the only way that the custodian has made any realization of the profits in the bonds representing the companies' proportion of the impounded funds (Campbell, III, 533).

The distribution to policyholders of the amount set out in the decree is not quite completed. The custodian has 3,566 checks totaling $3,251.25, which have never been mailed to the policyholders because of lack of information. With that exception the distribution has been mailed to the policyholders at their last known address (Campbell, III, 533-534).

As of August 31, 1919, there were 3,197,107 checks written and mailed, totaling $2,230,313.80. There were

3,566 checks to be completed and mailed totaling $3,251.25. There was a total of 2,783,958 checks paid by the bank, totaling $2,047,713.20, and there were 413,149 checks mailed but not paid by the bank, totaling $183,600.60. Of the last mentioned 413,149 checks, 280,020 were returned by the Post Office. The custodian is in process of getting better addresses from time to time, and mailing out those checks. There is about one-tenth of one per cent that has never been mailed out (Campbell, III, 534).

Mr. Folonie has received copies of the custodian's reports that have been periodically rendered to the court. Each time a copy was sent to him. He does not say there is any inaccuracy in them; he does not know whether they are accurate (Folonie, III, 223).

After the settlement was made and the decree entered, there were, in round dollars, some nine million dollars in impounded funds in the federal case (Henne, I, 49).

PAPERS FILED IN THIS COURT AND IN INTERLOCUTORY INJUNCTION.

The plaintiff introduced in evidence the following instruments which are not here set out and which were not copied by the court reporter for the reason that they are papers filed in the case and therefore are already before the court.

1. The original bill in equity.
2. The amendment to the bill in equity.
3. The motion and application for an interlocutory injunction.
4. The interlocutory injunction order.
5. The interlocutory injunction bond.
6. The answer of defendant.
7. The amended and supplemental bill in equity.
8. The answer of defendants to amended and supplemental bill in equity.
9. The master's digest of evidence and report and findings of fact.

No exhibit numbers were assigned to the above mentioned nine instruments.

Counsel for plaintiffs explained, in offering these instruments in evidence, that he did not know whether the original pleading and court orders and master's reports are a part of the record proper of the present proceeding; that if they are not a part of the record proper of the present proceeding, then either side would be debarred from making any use of them or having any access to information or statements that are in the pleadings; that in their return to the show cause order, each company had alleged the pendency of these suits, that the petition was filed, that the issues were joined, and that an interlocutory injunction was given, that a bond was given, and that a master's report was filed; that counsel did not know whether this proceeding is, in effect, a bill of review; and if it is a bill of review, they ought to be introduced (III, 517-518).

VI.

EXPENSE OF LITIGATION AND ASSESSMENTS.

After the suits were filed there were certain expenses in connection with the litigation (Terry, III, 376; Duboc, III, 256) in the way of attorneys' fees, filing, etc. The Subscribers Actuarial Committee O. K.'d all attorneys' fee bills sent them by the attorneys. After the bills were approved by the Subscribers Actuarial Committee, Mr. Terry paid the bills. He obtained the funds for this purpose either through special or regular assessment upon the Missouri Inspection Bureau members (Terry, III, 376). It was the duty of the committee to pass on all bills that were presented to it (Henne, I, 59). The expenses were paid through the assessments of the Missouri Inspection Bureau (Duboc, III, 256). In every way they anticipate their expenses and make an assessment accordingly (Henne, I, 23). Witness knew of no money expended for legal expenses except through the Missouri Inspection Bureau and by the trustees out of the 30 per cent fund. That was true during the entire time of the litigation from 1922 on down (Terry, III, 384-385). The funds that are provided for the Actuarial Committee are levied on the subscribers to the bureaus on the basis of the volume of premiums that they write (Henne, I, 21-22). At the start of the litigation it was the practice for the expense items, especially in regard to attorneys, to be referred to the committee, which passed upon them. It then passed to the rating bureau for payment. The committee that had charge of the litigation had been passing upon the expense, approving or disapproving them (Henne, I, 58-59).

The assessments are paid directly to the rating bureau. The Actuarial Committee authorized the payment of bills arising out of this litigation. They certified that to the rating bureau; namely, The Missouri Inspection Bureau. That bureau, to raise that money, made assessments accordingly, and it was paid the same as any other assessment for the support of that bureau (Henne, I, 22-23).

The assessments are made by the Missouri Inspection Bureau and witness' company, as well as other companies, pay those to that bureau. The bureau must pay

its inspectors and engineers, all who make inspections, to know of the proper rating. It must pay its own salaries. Witness did not know that was the way it was being done until today Mr. Hobbs told him so. Witness heard the attorney asking those questions, and he asked Mr. Hobbs if that was the way it was. Up to that time witness did not know that was the way it was done (McCain, III, 347-348). The Actuarial Committee never handled the money that was paid through assessment to the Inspection Bureau (Stip., I, 376). The committee, as such, had no funds; but was charged with the duty of at least passing on the disbursements that were to be made by the rating bureaus in regard to the litigation expense. It was the committee's practice to pass on those bills, and witness understood it to be their duty to do that (Henne, I, 64). Mr. Henne could not tell from whom the checks came that were paid to the attorneys, because as far as he went was the approval of the bill. He would say that the checks came from the Missouri Inspection Bureau (Henne, I, 23). As Mr. Williams recollects the bills were paid by the Missouri Inspection Bureau. The litigation was in the hands of the Missouri Inspection Bureau and he thinks they handled and paid the bills. The Subscribers Actuarial Committee had a sort of general supervision over the matter, and suggested that certain bills, as he recalls, rendered by Hicks and Folonie were all right, and they were paid by the Missouri Inspection Bureau (Williams, I, 72). There was no obligation of the committee to the attorneys as to the matter of payment other than from time to time they paid their fees as they were presented. Bills were presented to the Committee, at the time payments were made to them, by way of a statement of account for services rendered. These bills were submitted and approved by the Committee and disbursements of the fees ordered in accordance therewith (Henne, I, 21). Mr. Williams thinks that Hicks and Folonie submitted to the committee for approval the bills for attorneys' fees throughout the year and thinks they were passed on in an informal sort of way (Williams, I, 72). The regular assessments of the Missouri Inspection Bureau were made as to the fiscal year of April 1 to carry through from April 1 of one year to April 1 of the succeeding year. The assessments were not broken up to show the proportion of each general item of expense. During some of the years the statements contained a memorandum, printed in red ink,

to the effect that they included litigation expenses through the years from the time of institution of these suits down to 1935 (Terry, III, 376). To witness' best recollection there was no notation in the notice of the 1935 assessment that it covered any legal fees in regard to the Missouri litigation (Terry, III, 384). In 1935 a part of the assessment was applied to attorneys' fees, and witness believes (but is not positive) that some was so applied in 1936. The 1936 regular assessment was still in excess of the regular expense of the bureau (Terry, III, 384). The bureau made no special assessment for legal expenses in 1935 (Terry, III, 384). (Note: The knowledge of various executives of plaintiff companies that the expenses of litigation were paid by bureau assessments appears under "XIX, Knowledge of Individual Companies.")

The Missouri Inspection Bureau paid attorneys' bills from time to time. So far as witness can recall, it never had the attorney bills fully paid up to date at the end of any one particular year. Mr. Terry borrowed money several times to pay attorneys' fees and would give a note at the bank. In one instance Mr. Terry signed it individually. At that time he signed it "Waterworth and Terry." Witness thinks Mr. Waterworth died in 1928. One note was given in December, 1935, signed by the Missouri Inspection Bureau by P. W. Terry. It was endorsed by witness personally and by Mr. Street both as agent and personally. That did not pay the attorneys' fees in full up to that date. In the assessment notices Mr. Terry made no mention about attorneys' fees; he simply listed litigation expenses. From time to time they had printed forms. Witness has no recollection of what the red printed matter contained. One form was that furnished by Mr. Duboc. Witness does not recall the status of the account with Hicks and Folonie in the spring of 1935. He owed them tremendous sums of money probably as far back as 1932, maybe in part as far back as 1931. To witness' recollection the account was never balanced throughout those years (Terry, III, 376-378).

The attorneys received their fees from the Missouri Inspection Bureau before the 6 per cent checks and that bureau made its assessment for all expenses big enough to include that among other things including the rating activities. After the trustees came in possession of the funds, some of the attorneys' fees were paid out of that (Statement of Facts by master and attorneys, I, 225).

At the time this litigation was instituted, no special arrangement was made about the payment of Mr. Folonie's firm for its services (Terry, III, 376). Mr. Hobbs is quite sure that neither Mr. Folonie, Mr. Berger nor Mr. Morrison made any demand upon the Committee for fees in the first half of the month of May, 1935, before the compromise is alleged to have been signed. At least he has no such demand in his records (Hobbs, I, 19). Mr. Folonie made a practice of billing at the end of each calendar year more or less from 1923 forward. The first payment he got, bearing on this litigation in any way would be 1929, in which there were services in the old litigation and incidental work done in the particular litigation. At the end of 1930 there would be annual bill which would cover continuing services in the old and in the new litigation, without any effort to segregate one from the other (Folonie, III, 157-158). That continued uninterruptedly up to 1938. The latest billing was at the end of 1938. He may have had some small expense bills since but doubts it because such expense bills for cash outlay were often sent at interims through the year (Folonie, III, 158).

Mr. Folonie's bill would be directed to Subscribers Actuarial Committee and delivered to its chairman (Folonie, III, 158).

The fees he received were uniformly $75,000.00 for nine of those years. Once at the end of each calendar year he rendered a statment. His expenses were mostly his own traveling expenses and matters paid out of his office, which would be court fees, stenographers' bills, printing bills, occasionally photostatic bills when something came up and they asked for a copy. There were no expenses of large amount or unusual character. So far as he can remember the largest were probably stenographic bills. He never paid or advanced any of the fees to his associate or subordinate counsel (Folonie, III, 196-197). There was a division of opinion in the Subscribers Actuarial Committee in regard to the division of expenses between the federal and state cases while the cases were intermingled, as to whether, if any money were recovered, it was available to the particular group that recovered it, or subject to some kind of a distribution to the others who might not recover in another suit. When the federal cases came to a final decree, the question arose whether the major portion of services after that, being in

the state court, should be chargeable against the federal court companies. Mr. Folonie was finally directed to bill to the committee, which directed that they be paid out of the federal court fund as to those expenses for the last year or two when the bulk of the service was really rendered to the state court companies (Folonie, III, 159). In his service bills Mr. Folonie made no effort to distinguish between one and the other. After discussion with the committee, it was decided it was impractical to make any separation because they were so interwoven and overlapping (Folonie, III, 159).

Defendant's Exhibit 20 (I, 102-103) is a true copy of all of the minutes of the meeting of the committee of November 27, 1935. It shows that those present were Messrs. Street, Williams, Harding, Bell, Clark and Henne, but Mr. Hobbs stated that his name should have been included (Hobbs, I, 102).

The exhibit recites that the Chairman outlined the request received from the attorneys for a substantial payment on the outstanding bills in Missouri, which was desired at this time, largely to ease their burden in connection with federal income tax and tax problems arising out of the settlement of the estate of Mr. Hicks; that it was not advisable or practicable at this time to run a special assessment by the Missouri Inspection Bureau to raise sufficient funds to liquidate the present outstanding bills amounting to approximately $300,000.00, and it was suggested that Manager Terry of the Bureau endeavor to secure a loan from a St. Louis Bank in such an amount as would enable him to pay Hicks and Folonie a goodly portion of the back bills; but Mr. Terry reports that he can secure a loan of 150,000.00, on a three months note subject to renewal to be endorsed by him as manager and personally, and also by C. R. Street, agent for the companies and personally (I, 102-103).

A resolution was adopted that Messrs. Street and Terry in those capacities sign and endorse the note for the money being borrowed by the Inspection Bureau for the purpose of liquidating a substantial part of the outstanding attorneys' bills incurred in the litigation, and to sign and endorse renewal of such notes as may be required by the bank until the same has been entirely paid, and that the companies in whose behalf Messrs. Street and Terry are endorsing said note will protect them against personal liability (I, 103).

Witness remembers the meeting of November 27, 1935 (he was shown Exhibit 20 to refresh his recollection). He thinks that Mr. Hicks, Mr. Folonie's partner, died about the time when the compromise was signed (H. Clark, I, 253-254).

Witness does know the reason why it would not be advisable or practicable to run a special assessment (referring to Exhibit 20). A loan of $150,000.00 was proposed and Mr. Street with Mr. Terry were given power to negotiate this loan through a St. Louis bank for the purpose of applying it to the fees owing to the companys' lawyers and that was done. The $150,000.00 was paid to Hicks and Folonie. That left $150,000.00 remaining on attorney's fees. The compromise had been signed (H. Clark, I, 254). Witness did not know of any more attorneys' fees that the companies would owe, but there very likely would have been more. At least he understood that the amount of their bill to date was $300,000.00. Prior to that time there had been payments to the attorneys, but witness does not know how much. He thinks the records of the committee would show the approval of the bills (H. Clark, I, 254-255).

Witness does not recall that the committee authorized the borrowing of money to pay some of the lawyers. He presumes that was just one of the details that came out in connection with this litigation. Witness was at the meeting indicated in Exhibit 20, but does not remember authorizing Mr. Terry to borrow $150,000.00 to pay lawyers. That made no impression on him at the time of the meeting. He never made any protests, and he just does not remember anything about it (Bell, I, 161-162). The $150,000.00 borrowed by P. W. Terry as manager of the Insurance Bureau was paid by the trustees on April 14, 1936 (Admission I, 163-164).

Defendant's Exhibit 24 (I, 106) is all that part of the minutes of the meeting of the Subscribers Actuarial Committee on October 23, 1936, referring to Missouri rate litigation. It shows that those present were Messrs. Street, Henne, Robertson, Koeckert, Harding, Williams, Bell, Beckwith and Hobbs.

It shows that the bills of Attorneys Folonie and Morrison covering fees and expenses for the year 1935 were presented by the chairman, together with an outline of the amount paid in the past. Payment by the trustees of the Special Fund was approved by Harding and Koeck-

ert, and it was recited that the signatures of two are required under the provisions of the trusteeship (I, 106).

The Special Fund referred to in Exhibit 24 was the 30 per cent, being the Street-Folonie trust fund (Hobbs, I, 107), and the statement "the signatures of two are required" means members of the Subscribers Actuarial Committee (Hobbs, I, 107).

Mr. Clark knew that the declaration of trust provided that disbursements out of the 30 per cent fund by the trustees should be on approval of Mr. Jackson Parker or by two members of the Actuarial Committee (H. Clark, I, 256). He has read the provision that disbursements out of the 30 per cent fund by the trustees should be on approval, "evidenced by order and direction for payment of the money upon certificate of J. V. Parker, as secretary, or his successor, or the action of such committee, or upon the signed order of any two such members" (H. Clark, I, 256). He never saw it before but he knew that that was the practice in disbursing that money. When the money was disbursed from the trust fund it was ordinarily approved by two members of the committee. When the money was disbursed it was not brought before the committee and action taken by one of those methods, but when it was disbursed it was approved by any two members and the trustees disbursed it after the approval. That was the custom pursued (H. Clark, I, 256-257). Mr. Jackson Parker could certify that the committee had approved disbursement out of the 30 per cent fund, or two members could approve it. Mr. Parker could simply certify the action of the committee. Witness imagines that thereafter he acted as one of the two members of the committee to approve certain disbursements (Harding, I, 286). Mr. Harding has seen the figures that the 6 per cent dividend was changed to 11 per cent (Harding, I, 288).

Witness' attention was called to the minutes of the committee meeting of October 23, 1936, which meeting he did not attend. He does not recall that the action of the committee taken at that meeting was ever called to his attention, or that it was ever thereafter specifically called to his attention that the attorneys' fees mentioned in the minutes had been approved and paid. The minutes of the last meeting were not read at the next ensuing meeting (H. Clark, I, 276). He cannot state positively that he ever knew that Folonie and Morrison were paid for the year 1935. They were paying them bills for some

twelve or fourteen years, but witness cannot recall any specific year. It was no new thing for witness to allow attorneys' fees (H. Clark, I, 277). Mr. Folonie thinks, that prior to the settlement, his checks for fees universally came through the Missouri Inspection Bureau. The fees of the associate counsel were paid in the same way. They would be sent to Mr. Folonie and he would forward them to the associate counsel. After the settlement was made, and funds were in the hands of trustees, they were paid out of the trustees' account after they were ordered in writing to be paid by the committee. Mr. Folonie is not clear about it, but perhaps one bill was paid through the Missouri Inspection Bureau and not out of the trustees' account after the settlement (Folonie, III, 227).

Mr. Terry knew that certain expenses were being paid in 1936 out of the trustees' account. They were the expenses agreed on in the stipulation for settlement (Terry, III, 384-385).

After the compromise was signed and the settlement was an accomplished fact, Mr. Street did not call on the Subscribers Actuarial Committee for any expenses in connection with the compromise. He only asked the committee to approve current bills in connection with the general routine of the committee. No special funds were called for (Henne, I, 25). The bureau did not pay Mr. Street any compensation or expenses. At some time a bill might have been rendered to the Western Actuarial Bureau for expenses and Missouri Inspection Bureau may have reimbursed the Western Actuarial Bureau for expenses but no compensation. Frequently committee expenses were paid directly by the Western Actuarial Bureau to the Subscribers Committee. Witness remembers that one time he paid Mr. Street's expenses to Kansas City and he may have advanced Mr. Street expenses on return fares to Chicago. The one time when Mr. Street was in Kansas City attending a meeting of the Kansas City Chamber of Commerce in 1930 this bureau may have paid his expenses. It has done so once or twice for committee members (Terry, III, 386-387).

VII.

NOTICES AND KNOWLEDGE IN GENERAL.

ACQUAINTANCE WITH PENDERGAST, O'MALLEY AND McCORMACK.

After the attorney for plaintiffs had asked several witnesses in Chicago and New York if they were acquainted with Mr. T. J. Pendergast, Mr. R. Emmet O'Malley or Mr. McCormack, the master made the following statement:

> "In view of the fact that these people lived so far away from Missouri, unless there is evidence to the contrary, I will always assume and find that the witnesses were not acquainted with T. J. Pendergast, R. Emmet O'Malley or with Mr. McCormack. There is no reason to assume that any of them are personally acquainted with them unless there is some evidence introduced to that effect. * * * All presumptions would be that they didn't. They are here in New York and Chicago, etc. * * * That applies to everybody. It is a natural presumption I will indulge."

Mr. Bullitt: * * * In view of that, Mr. Master, is it necessary for me to go ahead and ask each one of these gentlemen whether or not they authorized or instructed or knew that Mr. Street was paying any money for bribery to somebody to get this compromise through, like I have been?

The Special Master: That is different (II, 144).

KNOWLEDGE OF AGENTS SERVING ALL COMPANIES.

Mr. Haid, President of the Insurance Executives Association, went to Kansas City during the federal grand jury inquiry (Haid, II, 403) under a subpoena (Haid, II, 405).

Mr. Terry of the Missouri Inspection Bureau preceded all of the insurance executives who came to Kansas City to testify before the federal grand jury. He was not present when they came and had no discussion with any of them before he came. They never undertook to tell Mr. Terry anything about it at all. None of them talked with him after he had been before the federal grand jury.

No insurance executive has ever undertaken to tell his knowledge or lack of knowledge concerning the matter to Mr. Terry (Terry, III, 385).

Mr. Terry knew nothing about the $100,500.00 fund raised in 1935. He first learned that any money had been raised, other than through his bureau, in the newspapers in the early part of this year when the story came out about the corruption. He had no intimation of such a fund until then. Charles R. Street never talked to him about anything of that kind (Terry, III, 378). Mr. Terry thinks the settlement agreement received publicity in the newspapers the next day after the Kansas City meeting (Terry, III, 383).

Mr. Terry read considerable in the newspapers about a compromise being considered. His first definite knowledge was along sometime in April of 1935. He received that information from Mr. Street in the latter's Chicago office. His recollection is that he was there on other business and Mr. Street brought it up, saying that he was working on a compromise and wanted Mr. Terry to prepare rate filings in accordance with the compromise which he had in mind. Mr. Terry cannot recall that Mr. Street said with whom he had been conferring about a compromise. He did not mention the Pendergast organization nor Tom Pendergast. He may have said that he was discussing a compromise with Mr. O'Malley (Terry, III, 378-379). When Mr. Terry was in Mr. Street's office at Chicago, Mr. Street told Mr. Terry that he was contemplating a settlement before any settlement was agreed upon (Terry, III, 389). Mr. Street told nothing further about the nature of the compromise, except to the extent that he promised Mr. O'Malley there would not be an increase over the 100 per cent level in the rate filing (Terry, III, 379). Mr. Terry thinks this conversation with Mr. Street was in April, 1935, because Mr. Terry had to have some time to prepare the filing. He came back and prepared the schedule for filing in general substance, not in fine detail, pursuant to direction from Mr. Street. Then Mr. Terry got a request from Mr. Street, directly or indirectly, to be in Kansas City on May 14 at the Muehlebach Hotel to attend a conference in connection with the compromise. The talk about getting up schedules happened before Mr. Terry came to Kansas City to the meeting about the compromise (Terry, III, 379). Mr. Terry did not see or talk with Mr. Street in connection with the

compromise from the time he left the Kansas City meeting until after he left for home. Nobody returned with Mr. Terry to St. Louis (Terry, III, 383). Mr. Terry was not in conference with Mr. McCormack at any time between the meeting of May 14, and his return to St. Louis (Terry, III, 383).

Mr. Parker gave Mr. Terry no information about the compromise. Mr. Terry did not talk with anyone about the compromise before he actually went into the Kansas City meeting. He did not confer with Mr. Street before going into that meeting (Terry, III, 380).

Mr. Terry read about the federal decree in the newspapers. He was not there when it was entered. He first learned about the 5 per cent assessment for legal expenses in the early part of this year from the newspapers. Prior to that time he had no information about the assessment at all (Terry, III, 384).

Mr. Terry has a recollection that one time, probably in 1934, Mr. Street told about employing one or more lawyers for certain specific phases; it was during the time the litigation was on (Terry, III, 390). Mr. Terry probably had one conference in Mr. Street's office following the first conference, but he is frequently in Chicago. The compromise was discussed at that time. He got no further information about with whom Mr. Street was negotiating nor the terms of it (Terry, III, 380).

Mr. Erskine, secretary of the Executives Association, knew in a general way about the Missouri rate controversy. He had followed the newspaper reports, he guesses, since 1922. In a very general way he was familiar with the case involving the 16 - 2-3 per cent increase (Erskine, II, 347).

He has heard talk of compromising that controversy. He first heard about that in the spring of 1935. He had no information of efforts as to a compromise before the meeting in Mr. Haid's office in May, 1935 (Erskine, II, 347). Mr. Berger has represented the plaintiffs in these cases throughout this hearing. He is familiar with all of the testimony that has been given in these hearings (Berger, III, 394).

The first time Mr. Homer Berger, Kansas City attorney for the plaintiff companies, heard any discussion of the compromise was sometime in the spring of 1935. His best recollection is it was the latter part of February or the early part of March. He was in Jefferson City

and heard that there had been a conference in the governor's office in which the superintendent of insurance and his counsel and Mr. Street had been present. He made inquiry of Mr. Folonie who said yes, he had known of such a meeting, but was not present. The newspapers carried repeated stories (Berger, III, 391).

Mr. Berger had learned nothing about the details and nature of the tentative negotiations for settlement at the time of the Kansas City meeting, but just the fact that there was a discussion of settlement of the litigation. He cannot remember from whom he learned in Jefferson City that there had been some discussion in the governor's office. It was a matter more or less of common talk around Jefferson City at that time. Mr. Berger and Mr. Folonie were in Jefferson City at that time working with the restitution suit, when Mr. Berger first asked Mr. Folonie if he knew anything about it. Mr. Folonie said he knew nothing other than that there had been a conference, and that Mr. Street had told Mr. Folonie some considerable time before that Mr. Folonie was not to have anything to do with the settlement. Mr. Berger had no further explanation concerning the compromise until the day following the meeting at the Muehlebach Hotel. He was not invited to attend the meeting at the Muehlebach, and was not in conference on that date with any of the parties negotiating the compromise in any way or manner. He was in Kansas City at that time, but no one invited him to come; so he did not come. There were no conferences in his office prior to the meeting (Berger, III, 391-392).

He first met Mr. Street when Mr. Street appeared as a witness in Chicago before the master when they were taking evidence in the case. Another time Mr. Berger went with Mr. Folonie to confer with Mr. Street about the restitution case. By the restitution case, Mr. Berger means the motion of restitution that was filed in *Aetna* v. *Hyde*, in the state court. The third time he saw Mr. Street was when Mr. Street appeared as a witness before the legislative committee in the spring of 1937. Mr. Berger never had any discussion with Mr. Street in regard to the compromise of the case (Berger, III, 396-397).

At the time Mr. Berger verified the motion for a decree he absolutely believed that it was a compromise made in good faith or he would not have verified it or even filed the motion (Berger, III, 395).

The first Mr. Berger ever heard of the fund of $100,-500.00 was in the early part of this year when Mr. Milligan and Mr. Henson, attorney for the insurance department, filed a motion in these cases asking that the trustees under the final decree file a report in court. Mr. Berger had heard, solely by rumor, from Mr. Walter Eckert, Chicago attorney for the executor of Mr. Street's estate, in the spring of 1938, that Mr. Street, during his lifetime, had had some income tax controversy over some money that he had gotten from the companies, and Mr. Eckert asked Mr. Berger if he had heard about it and Mr. Berger said no. That was the extent of Mr. Berger's knowledge (Berger, III, 393).

Mr. Berger does not think that Mr. Folonie mentioned to him the subject of having received checks and endorsing them over to Mr. Street until after the motions were filed in the federal court. Mr. Folonie may have told Mr. Berger before, but if so it did not impress him and he did not remember it. After the motions were filed, Mr. Folonie explained the thing in detail at the time of the preparation of the report. The motions were filed in 1939, a short time before the grand jury activity (Berger, III, 393-394).

Mr. Berger had no knowledge that the 5 per cent assessment was going to be made. He first actually learned that the assessment had been run when they took the testimony of the "executors." There was some talk or reference made in the motions filed in the federal court as to the trustees' report about $100,500.00 and $450,000.00 additional sums. That was the first time Mr. Berger had heard even a rumor that 5 per cent or any money had been collected from the companies. That was the first information he had in regard to either the first fund, or the 5 per cent fund (Berger, III, 394).

During the drafting of the settlement agreement there was no discussion of the payment of any expense in connection with the litigation by assessment against the companies or any number of companies, either by percentage or by arbitrary assessment. Only Mr. Barker, Mr. Folonie, and Mr. Berger were at that conference (Berger, III, 396).

After Mr. Berger obtained the information early in 1939 that these funds had been raised and apparently distributed for a corrupt purpose, no insurance executive even intimated that he had any suspicion that the funds

were so used prior to the exposé of the grand jury investigation (Berger, III, 394-395).

In the month following March, 1936 (see date of Exhibit 145, II, 813) the semiannual meeting of the Western Underwriters Association was held at White Sulphur (Waterman, II, 816). There was to be a meeting of the Subscribers Committee at White Sulphur Springs. Witness is a Subscriber and he attended the meeting. He saw Mr. Street in the crowd but did not talk to him and did not ask him for such a statement. They just felt comforted by the numbers that were so much more interested than they. They have always let the others take the lead. This was a small company, not a big group and they never took any active part in the conversations. Witness never spoke at one of those meetings in his life. He did not personally inquire of Mr. Street. He mentioned it to one or two of his friends and they all said they had paid the same assessment and he let it go at that. He thinks he asked Mr. Truscott of the Camden what this money was for and he said it was just part of the expense and that he thought it was all going to be explained in the final report. Witness' recollection is that Mr. Street did not publicly address the White Sulphur meeting. If he did, witness does not recall it (Duboc, III, 261-262).

NOTICES TO ALL COMPANIES.

Fire insurance companies are regulated companies and are subject to be examined by the auditors of every superintendent of insurance of every state where they do business. Every last one of the superintendents has a right to ask what an item is for (F. Martin, II, 197-198).

Occasionally the Missouri Inspection Bureau sent out circulars to the companies in regard to the progress of the litigation. Most of the circulars were sent out by the Subscribers Actuarial Committee. Mr. Terry has most of those circulars with him (Terry, III, 387).

The recollection of Mr. Hobbs, Secretary of the Subscribers Actuarial Committee, is that advices were sent to all interested companies that the litigation was settled, either through the Secretary's office or through the Missouri Inspection Bureau (Hobbs, I, 16).

When the federal court entered a decree distributing the money, that information was promptly given to the

companies who were plaintiffs in the litigation (Hobbs, I, 16).

The circular letter dated June 12, 1935 (Defendant's Exhibit 115), was sent to the companies and to all agents to the best of Mr. Terry's knowledge (Terry, III, 388).

Defendant's Exhibit 115 (I, 530-531) is as follows:

"DEFENDANT'S EXHIBIT 115."

"MISSOURI INSPECTION BUREAU
1330 Pierce Building
St. Louis, Mo.
June 12, 1935.

To Agents:

We are writing you at the request of our subscribers so that you may be placed in possession of information respecting settlement of insurance rate litigation.

Settlement has been agreed upon between the Superintendent of Insurance and the companies. Its completion awaits the action of the courts to which it will be presented.

Notwithstanding newspaper statements to the contrary it is a fact that the settlement has not been presented to any court up to the present time nor has any court expressed its opinion as to its propriety.

The enclosed resume of what the settlement will accomplish, if completed, will put you in possession of its terms in a general way. After you have given it study, if you are of the opinion that the settlement is a constructive action to the benefit of the policyholders of this State your companies would appreciate it if you would have representative policyholders write to the Superintendent of Insurance, Honorable R. Emmet O'Malley, to that effect.

The insuring public must necessarily look to the agents of the State to give them information respecting details and benefits of this settlement as otherwise they have no resort except to distorted statements from uninformed sources.

Aside from the obvious benefit to policyholders from reductions in rates, there is also the very important consideration that if the matter is satis-

factorily settled sound relations between the State and the insurance fraternity can be reinstated which have been gravely interrupted over many years of time.

Yours very truly,

(signed) P. W. Terry
Manager.

P.S. The reductions referred to in the enclosed resume will not be effective until settlement is completed and you are specifically advised."

The above circular letter went to all of the companies and to all of the agents. The circular is addressed to the agents, but it is the bureau's usual practice to send the companies copies of everything that they send to the agents, so that they can be fully advised as to what their agents have. In the second, third, and fourth page of the inclosure there is an explanation of the proposed new rates going into effect (Terry, III, 388).

Defendant's Exhibit 116 (I, 530) is a printed circular which was attached to the letter, Defendant's exhibit 115. It states that 20 per cent of the impounded funds would be returned to the policyholders; that the State would be reimbursed to a definite extent for the state's expenses, that the balance of the collections would be returned to the companies, and it contained an analysis of the proposed new rates, and how they would apply, which, it was admitted, has nothing to do with the pending investigation.

Mr. Bell could not remember how soon it was after the compromise was made that he got a report on it. A report from the Western Actuarial Bureau was sent out to all of the companies (Bell, I, 142).
by Subscribers Actuarial Committee. It is as follows:

Defendant's Exhibit 105 (I, 477-478) is a circular letter dated February 4, 1936, on the letterhead of and signed "To Companies:

In re: Missouri Rate Case
-Federal Court-

A final decree was entered by the statutory three-judge court at Kansas City on February 1, 1936, disposing of this case. It may be summarized as follows:

(1) The disposition of the case, as stipulated by the parties, is confirmed.

(2) No policyholders having intervened, distribution is made according to the terms of settlement.

(3) On all policies effective from June 1, 1930, to April 30, 1935, the title to the impounded fund is confirmed, 20 per cent to policyholders and 80 per cent to companies, of which 50 per cent is to be sent to them directly, and 30 per cent to C. R. Street and R. J. Folonie, trustees.

(4) On all policies effective May 1, 1935, to November 10, 1935, policyholders receive one-third, and the companies (see point 6) two-thirds, to be transmitted 50 per cent directly to the companies, and 16-2/3 per cent to C. R. Street and R. J. Folonie, trustees. (This means putting the new rates back to May 1st as originally agreed.)

(5) Profits on securities and interest acquired during retention of the fund have their pro rata proportion assigned to policyholders the same as principal. The remainder is placed to the credit of the companies, but will be resorted to for Custodians' cost of refunding, which will consume the major portion of it.

(6) The Court is also, for the present, retaining the companies' share of the impounded money upon policies respecting which impoundings were made subsequent to July 15, 1935 (Policies effective from May 1, 1935, forward), so that for all fees, costs and expenses of court officers and refunding operations there may be a fund against which resort may be had.

(7) The distribution to be made in the immediate future to cover pro rata of money impounded upon policies effective prior to April 30, 1935, (see point 4) is merely a payment on account, and all adjustments arising out of errors, ommissions, cancellations not yet posted, and similar items, will be adjusted against the remnant remaining in the hands of the Custodian. (See circular of February 3.)

(8) The distribution of the fund to policyholders will be undertaken by W. T. Kemper, Custodian, under this decree. It was originally contemplated that the Superintendent of Insurance should make the distribution but he has expressed his willingness that the Custodian perform this service.

(9) It is anticipated that no remittances to policyholders can be made until June, 1936, or perhaps even later, because the books cannot be completely posted and verified and balanced before that time. The distribution to policyholders thereafter will require considerable time; there will be approximately three and one-half million checks, which will include pro rata of interest to each policyholder, requiring much tedious calculation and checking. About half of the checks will be fifty cents or less in amount.

(10) The money coming into the hands of C. R. Street and R. J. Folonie, trustees, will be employed to discharge any debts incurred by or under the direction of this committee; agreed amounts payable to the Superintendent of Insurance and for his counsel; court costs; Custodian's fees; attorneys' fees and expenses of counsel for the companies; costs of administering and safeguarding money in the hands of the Trustees; contingent allowances or charges; any remaining balance subject to distribution to the companies will not, in the nature of the matter, be finally and completely distributable for some time to come.

Subscribers Actuarial Committee.

State Court cases still to be decided."

THE GOVERNING COMMITTEE

Defendant's Exhibit 8 (I, 54) is a letter from C. R. Street (Henne, I, 56) which Mr. Henne does not doubt had been received in his office, because there was a subsequent letter from Bert Jones identifying it as such. The letter is dated September 25, 1936, and is addressed "to the Governing Committee." It is marked in typewriting "copy for Mr. A. E. Henne." It is as follows:

"Missouri Impounded Premiums

Treatment to the Expense Item.

Following my report to the Committee dated July 22nd, 1936, I have conferred with representatives in this city of Joseph Froggatt & Company, Insurance Accountants, and am advised that their recommendation would be to carry this item as legal expenses in the Convention Form of Annual State-

ment, page 11, item 69, as 'Legal Expenses *in re* Liquidation Missouri Impounded Premiums.'

This would be in addition but separate from the usual item of legal expenses carried under 'Disbursements' *on page 3, item 27* of the Convention Form.

- The recommendation of the insurance accountants, if adopted, will leave this item out of any calculation of the underwriting results in Missouri. In other words, the treatment of this item as recommended by Joseph Froggatt & Company will affect only the net surplus account of the statement, just as dividends to stockholders reduce net surplus.

C. R. S."

Joseph Froggatt & Company are certified public accountants that specialize in insurance. They have done a large amount of work for insurance companies. Witness thinks they have had quite a little activity in times past in working out a so-called convention statement to be used uniformly by all states. He thinks they had to do with whether or not a certain item would go under item 29 or 37. It is entirely a bookkeeping matter, or a matter of an annual statement (Culver, III, 414).

Witness imagines that the recommendation to leave the item out of any calculation in the Missouri Underwriting results was on the advice of the accountants Froggatt and Company that it would not be a proper charge against the normal Missouri expenses (Henne, I, 62).

It was admitted that the item referring to legal expenses on page three of the annual statement is item twenty-seven and is as follows:

"Legal expenses including legal expenses or losses" (I, 63).

At the meeting of the governing committee in Chicago, Mr. Kurth brought up the subject as to whether their accountants and lawyers should not agree on some formulae as to how this whole transaction was to be accounted for, relative to the Missouri refund. And, in order that there might be uniformity, having in mind their fears of penalty resulting from not reporting the impounded premiums to Missouri for taxation purposes, having had some experience with the Missouri department. They are a pretty hard boiled crowd out there, and that was one thing Mr. Kurth had in mind to forestall if it

were possible. However, different ideas prevailed among the accountants and nothing came of it; so they were left to their own decision as to how to account for it, Mr. Kurth asking the governing body accountants if they could not agree on something. He did not go to Mr. Street who lived in Chicago. He was sick then. He was not around. Mr. Kurth did not see Mr. Street for, he would say, at least a year. When Mr. Kurth was asked why he did not go to Mr. Folonie, his lawyer, he said this was a meeting that he was attending and he raised it as a question that could be discussed among insurance officials that were in charge in the West. It was an accounting matter that did not enter into the merits or legality of the case. It was simply Mr. Kurth's request to see if the accountants could not develop a uniform method for treating this thing. Mr. Kurth was asked if he did not suspect that it was not legal fees, and therefore he did not want to make further inquiry. He answered, "Not at all; emphatically no" (Kurth, I, 449-450).

VIII.

MR. STREET'S USE OF MONEY TO PROCURE A SETTLEMENT.

(Note. The direct testimony upon this subject was (with a single exception) all given by Mr. A. L. McCormack, whose testimony all appears in Volume III of the printed transcript of the evidence (pages 228 to 254 both inclusive). Therefore, the name of the witness and the volume of the transcript are omitted from the citations under this article of this report, except in the single instance when the testimony was not that of Mr. McCormack. A number in parentheses indicates where the preceding testimony appears in the transcript.)

Mr. O'Malley was an insurance commissioner of Missouri (Weiser, I, 222).

Mr. A. L. McCormack was acquainted with R. Emmet O'Malley, the Superintendent of Insurance, during the years that the latter held that office (229), and knew of the existence of the 16 - 2-3 per cent rate controversies in the federal courts and in the state court.

Mr. O'Malley came to St. Louis about (McCormack thinks), early in 1935 and called Mr. McCormack. They met at the Coronado Hotel, and Mr. O'Malley asked Mr. McCormack if the latter thought that the insurance companies would want to settle the fire insurance rate case. Mr. McCormack told Mr. O'Malley that he had no authority and did not know; but if Mr. O'Malley had any suggestion to offer he would be glad to convey it to Mr. Charles R. Street (229) vice-president of the Great American Insurance Company. Mr. O'Malley said, "Well, would you be willing to do that?" and Mr. McCormack said, yes, he would be willing to carry any message to Mr. Street that Mr. O'Malley had to give, and the latter said, "Well, if they would be interested in settling the case, maybe it could be done" and then suggested that maybe if Mr. Street would talk with Mr. T. J. Pendergast of Kansas City, that they might be able to get together and dispose of the case. Mr. O'Malley agreed to convey that information to Mr. Street (230). Mr. McCormack thinks Mr. O'Malley's statement was that if Mr. Street and Mr. Pendergast could come to an understanding, that a settlement could probably be brought about (253-254).

Some few days thereafter Mr. McCormack went to Chicago and informed Mr. Street of his conversation with Mr. O'Malley, and Mr. Street said he would be glad to meet Mr. Pendergast.

Mr. McCormack returned to St. Louis and communicated with Mr. O'Malley, who was either in Jefferson City or Kansas (230-231) City, not in St. Louis. Mr. McCormack told Mr. O'Malley that Mr. Street would meet with Mr. Pendergast, and Mr. O'Malley said he would try to arrange a meeting time. Later, Mr. O'Malley informed Mr. McCormack that Mr. Pendergast would be in Chicago on a certain date and Mr. McCormack notified Mr. Street of that fact (he thinks by telephone) and his recollection is that a date was fixed when Mr. Street and Mr. O'Malley would meet.

Mr. McCormack attended the meeting between Mr. Street and Mr. Pendergast, which occurred at the Palmer House in Chicago, two or three weeks after Mr. McCormack's former trip to Chicago (231). No one else was present besides Mr. Street and Mr. Pendergast. For about an hour and a half Mr. Street explained the many angles and ramifications of the rate litigation in Missouri, stating that, in his opinion, the insurance companies were entitled to all of the money that had been impounded; but that legal delays and things of that nature were prolonging the litigation to the point that it was disturbing the insurance business in Missouri; that the Missouri citizens were not receiving the modern coverages, lower rates, and things of that nature, and that Mr. Street was very anxious that some way could be found to dispose of the litigation (231-232).

Mr. McCormack was in and out of the room at various times during the meeting. Mr. Street said he would be willing to pay someone a fee for bringing about an acceptable settlement. Mr. McCormack thinks Mr. Street asked Mr. Pendergast what the latter thought it would cost to have that done. They agreed on the sum of $500,000.00 (232). Mr. Pendergast said he would do whatever he could to dispose of the matter upon his return to Kansas City, after they had agreed on the $500,000.00. Mr. McCormack's recollection is that Mr. Pendergast simply said he would see what he could do about it. The $500,000.00 was to go to Mr. Pendergast witness presumed, from Mr. Street, and Mr. Street agreed to pay that sum to Mr. Pendergast.

Question. Was any statement made as to when it was to be paid with reference to the settlement?

Answer. Well, other than when an acceptable settlement was procured, he would presume (232).

Mr. O'Malley was not then present (233).

Mr. McCormack returned to St. Louis. He does not think he talked to Mr. O'Malley immediately after that.

Sometime later, Mr. McCormack was in Chicago and Mr. Street informed Mr. McCormack that he, Street, had been giving the matter some thought, and was willing to raise the amount to $750,000.00 to expedite the settlement (233). Mr. McCormack conveyed that information verbally to Mr. Pendergast at the Congress Hotel in Chicago. Mr. Pendergast was not present when Mr. Street made that offer, but Mr. McCormack had seen Mr. Pendergast on the street, and he happened to go to Mr. Street's office, and he told Mr. Street he had seen Mr. Pendergast. Mr. McCormack then told Mr. Pendergast that Mr. Street had raised his offer to $750,000.00 within, he imagines, an hour thereafter, and Mr. Pendergast simply said he was working on the matter and was doing everything that he could to expedite it. Mr. Pendergast never did indicate with whom he was working (233-234).

It is Mr. McCormack's recollection that about May 9, 1934 (234), Mr. Street called Mr. McCormack by phone and asked him to come to Chicago, which Mr. McCormack did, and saw Mr. Street the next morning after the request. He went to Mr. Street's office, who closed the door, and said, "Do you want to do a favor for me?" Receiving a favorable response, Mr. Street said, "Do you mind taking this package over to Mr. Pendergast in Kansas City?" and showed Mr. McCormack some money. It was $50,000.00. Mr. McCormack said he would be glad to do it (234).

Mr. McCormack went from Chicago to Kansas City by airplane, got in Kansas City about 5:00 or 5:30 in the afternoon, and gave the money to Mr. Pendergast at the Jackson Democratic Club, 1908 Main, on the second floor. Mr. McCormack said, "Mr. Pendergast, Mr. Street gave me this package of money for you," handed it to him, and stayed probably a minute or a minute and one-half (234-235). The money was wrapped up in packages with a band around it, like they have in the bank, so you could tell from the back how much was in the package. Witness does not know whether it was ten packages or twenty

packages, but he could tell from the wrappers it was $50,000.00. Mr. Pendergast laid the money on the top of his desk (235). No one else was present when Mr. McCormack and Mr. Pendergast were talking, and no one came in while Mr. McCormack was there. Mr. Street had said he was going to have some more in a few days, and Mr. McCormack thinks he told that to Mr. Pendergast. Mr. McCormack cannot recall dates but May 9, 1935, is about right (236).

It is witness' recollection that in the interim of five days between taking the $50,000.00 to Mr. Pendergast and the meeting at the Muehlebach Hotel (see "Negotiation of Settlement") he advised Mr. O'Malley that he had made this delivery of money to Mr. Pendergast, and he thinks he told Mr. O'Malley how much it was. Mr. O'Malley knew that that amount of money had been delivered to Mr. Pendergast before the contract of settlement was entered into (241). He discussed this $50,000.00 (five days before the meeting) with Mr. O'Malley (McCormack, III, 241).

Later, Mr. McCormack went to Chicago to Mr. (241) Street's office. Mr. McCormack thinks this was not over a week after the meeting at the Muehlebach Hotel. He had gone to Chicago pursuant to Mr. Street's request. He thinks Mr. Street telephoned him. Mr. Street wanted to know if Mr. McCormack would take "this" over to Mr. Pendergast, and showed him some money. Mr. O'Malley told Mr. Street he would. Witness thinks the amount of money was $50,000.00—another $50,000.00—Mr. Street gave the $50,000.00 to Mr. McCormack on that occasion (241-242).

Mr. McCormack thinks he went from Chicago straight to Kansas City that same afternoon or night. He met Mr. Pendergast at the latter's office at the same place as before. Mr. Pendergast was there (242) and Mr. McCormack delivered the $50,000.00 to Mr. Pendergast. Mr. Pendergast took $5,000.00 of the money and asked Mr. McCormack to deliver $22,500.00 to Mr. O'Malley (242, 244) which Mr. McCormack did on several different dates (242). After Mr. Pendergast gave him this money, Mr. McCormack arrived in St. Louis the next morning (243, 245). He went straight back to St. Louis (245). Mr. O'Malley was in St. Louis at the time (243, 245). Mr. McCormack went directly to the Coronado Hotel and offered Mr. O'Malley all of the money that Mr. Pendergast

had sent him (243). Mr. McCormack said to Mr. O'Malley, "Mr. Pendergast asked me to give this to you" (245). Mr. O'Malley had no place or said he had no place to keep it (242, 243). He wanted to know if Mr. McCormack would keep it for him, which the latter agreed to do (243). Mr. McCormack kept it for him (242-243) in his safe deposit box (243) and gave it to him as he asked for it, making seven, eight, or nine deliveries right there in St. Louis (243). Mr. McCormack's recollection is that those deliveries covered four or five months (maybe not that long) before Mr. O'Malley drew it all. Mr. McCormack did not make a deposit of that money in the bank. It was delivered to Mr. O'Malley (243) at various intervals when he requested it, in sums of $500.00, $1,000.00 or $2,000.00—different amounts (243). Mr. McCormack always complied with Mr. O'Malley's requests. If he asked for a certain amount that is what Mr. McCormack gave him. Over the period which he has estimated, Mr. McCormack made the full delivery of the $22,500.00 to Mr. O'Malley (244) himself, not to any of his family, or his clerks, or to anyone else (244).

Question. In both of these $50,000.00, it was lawful money of the United States, wasn't it?

Answer. Very good money, yès, sir.

It was currency, paper, not coins (244).

Mr. McCormack cannot recall how long it was after February 1, 1936, but he was called to Chicago by Mr. Street (he thinks by telephone) and he went (he thinks) within a day or so thereafter (245). He met Mr. Street at the latter's office. Witness would think this was about April 1, 1936. Mr. Street had told Mr. McCormack (246) previous to that time that he was arranging to get some more money, and that when he got it he would let Mr. McCormack know. He did let Mr. McCormack know, and he went up there and saw Mr. Street. Mr. Street asked Mr. McCormack to take $330,000.00 to Mr. Pendergast, and gave Mr. McCormack that amount of money on that occasion in currency, bills, paper money, lawful money of the United States. Mr. McCormack carried it to Kansas City in a Gladstone case, went with it by train (246). When he reached Kansas City, Mr. McCormack saw Mr. Pendergast and delivered the $330,000.00 to him at his home. Mr. Pendergast counted the money, retained $250,000.00 of it, and sent $40,000.00 of it to be delivered to Mr. O'Malley, the Superintendent of Insurance (247).

Mr. McCormack delivered it to Mr. O'Malley in St. Louis. It is Mr. McCormack's recollection that Mr. O'Malley was then some place in the East, and he wired Mr. McCormack that he would be in St. Louis on a certain train. Mr. McCormack met him at the Union Station upon his arrival (247). Mr. McCormack did not have the money with him at that time; it was in his safety deposit box. When they met at the train, Mr. O'Malley asked Mr. McCormack if the latter would get the money for him. Mr. McCormack said "gladly." They drove down to the bank and got the money out of the safety deposit box, drove out to the Coronado Hotel, and Mr. McCormack handed it to Mr. O'Malley in his room at the hotel. The two rode down town together in Mr. McCormack's car, but the latter went into the bank and into the box alone. He then got in the same car to drive to the Coronado where he delivered the $40,000.00 to Mr. O'Malley. That was a part of the $330,000.00 (247-248).

Mr. McCormack delivered the $40,000.00 a few minutes after he reached Mr. O'Malley's room in the Coronado Hotel. They went up to the room with the bellhop, with the baggage and with Mrs. O'Malley. She was on that trip and she was in the car. She made the rounds with them down to the bank and out to the Coronado (248). They had a suite of rooms, and Mr. McCormack is not just clear as to whether Mrs. O'Malley was in the room when he delivered this money to Mr. O'Malley (248).

Mr. McCormack does not recall how it happened that Mr. O'Malley wired him that he would be through St. Louis at this particular time. Mr. McCormack had advised Mr. O'Malley sometime previously that he had this money for him. He does not know how long he had it for Mr. O'Malley. The latter knew that Mr. McCormack had the money when he wired that he was coming through St. Louis on this occasion (248). Mr. O'Malley accepted the money and kept it (249). It is Mr. McCormack's recollection that Mr. O'Malley put it in his suitcase (249).

About six months after the $330,000.00 delivery, Mr. McCormack made another delivery of $10,000.00 to Mr. Pendergast when he was sick. Mr. O'Malley was in St. Louis one day and asked Mr. McCormack if he would go to Chicago and see if Mr. Street would give Mr. Pendergast $10,000.00. Mr. O'Malley wanted to give it to Mr. Pendergast who was ill in the hospital at Kansas City.

Mr. McCormack thinks that is about all Mr. O'Malley said. Mr. McCormack went to Chicago and conveyed that message to Mr. Street, but did not immediately get the money. Mr. Street said he would get it (249), and send it to Mr. McCormack or have the latter come up and get it. Mr. McCormack returned to St. Louis and advised Mr. O'Malley that as soon as he heard from Mr. Street he would let him know (249). Mr. McCormack does not remember whether or not he gave this advice by telephone, but he did not write a letter. He wrote no letters in any of this that he has been detailing (250).

The next thing Mr. McCormack knew he was notified by a St. Louis bank that there was $10,000.00 there for him, sent from Chicago, and he thinks he received a little penciled memorandum from Mr. Street that the latter was sending $10,000.00, transmitting it through the bank. The local bank (250) notified Mr. McCormack by telephone that they had the money, and Mr. McCormack went over and got it in currency, $10,000.00 lawful money of the United States, took it to Kansas City, and gave it to Mr. Pendergast at his bedside in the Menorah Hospital, where the latter was confined at the time. No one was in the room at the time of the delivery. Mr. McCormack does not recall any discussion at that time. He was instructed by the nurse to only stay there a half minute or a minute (251).

Mr. McCormack very frequently saw Mr. O'Malley during the time intervening between the first contact, when Mr. O'Malley asked if he thought the insurance companies would like to settle the case, and the time when the meeting was held in Kansas City. He might have asked Mr. O'Malley how things were progressing at sometime, but he had no special meeting with Mr. O'Malley on the thing. He might have asked Mr. O'Malley how things were getting along, or something like that. Possibly a discussion came up about it (251).

It is Mr. McCormack's recollection that Mr. O'Malley asked him whether or not Mr. Street had seen Mr. Pendergast. Mr. O'Malley certainly knew it, and Mr. McCormack's recollection is that he told Mr. O'Malley the conference had taken place. He does not recollect whether Mr. O'Malley asked him about the terms of it. It is possible that he did, but Mr. McCormack has no recollection of it (251, 252). Mr. McCormack thinks he advised Mr. O'Malley what went on at the meeting, as

to whether they had been able to come to terms. He does not know whether he advised Mr. O'Malley, but he is certain that Mr. Street knew. He would naturally presume that he knew, and Mr. McCormack probably advised him of it, but he does not definitely recall any conversation along that line, but he advised Mr. O'Malley that the $50,000.00 was delivered to Mr. Pendergast (252).

Mr. McCormack does not recall any specific statement by Mr. O'Malley about anybody paying anything for a compromise, but he thinks the natural presumption would be there. Mr. McCormack does not recall any discussion about this balance due being discussed in his presence or with him by Mr. Pendergast or Mr. O'Malley, but he thinks it was a kind of a general understanding. He does not think there was any specific agreement that the balance would be paid when the State cases were disposed of. The reason he thinks there was a general understanding is (it is simply his opinion) that it was on a percentage basis, more or less (253). He thinks that the attorneys were paid on a percentage basis, and some expenses that they referred to—they were all more or less distributed on a percentage basis of the total. That is just the impression that he had. There was nothing in the original conversation between Mr. Pendergast and Mr. Street that led him to believe that they were getting it that way (253).

Mr. McCormack received a total of $440,000.00 from Mr. Street; $330,000.00, $50,000.00, $50,000.00 and $10,000.00. Of that, he delivered a total of $62,500.00 to Mr. O'Malley; $22,500.00 and $40,000.00 (254).

It was admitted (III, 437) that T. J. Pendergast was never at any time in his life a licensed practicing lawyer.

IX.

THE MEETING IN NEW YORK IN 1935.

On May 2, 1935 (Haid, II, 375, 377; Cartlidge, I, 463; Kurth, I, 423; Koop, I, 396; Warner, III, 351; Culver, III, 398), a meeting of insurance executives was held in New York City at the office of the Insurance Executives Association (Haid, II, 375; Erskine, II, 347; Cartlidge, I, 462-463; Koeckert, I, 495-496; Barbour, I, 338-9). Mr. Erskine has no recollection of having given notice to the executives to come to the meeting (Erskine, II, 348). As Mr. Haid recalls, he received a telegram from Mr. Street in the latter part of April asking Mr. Haid to have assembled in his office on a given date a list of insurance executives. He cannot recall the wording of the wire but it was to the effect that Mr. Street asked Mr. Haid to arrange a meeting with the named individuals. Q. Who were they? A. As I recall, Mr. Kurth, Mr. Sturm, Mr. Culver, Mr. Warner, Mr. Parsons, Mr. Koeckert. Mr. Haid identified the meeting by the date of checks which were given on the same day. He has searched for the telegram, but, though he does not recollect having destroyed the telegram, he must have done so. It had served its purpose. If it had been an association matter he might have kept the telegram, but when it is finished business, he does not keep telegrams (Haid, II, 375-377). The telegram did not state any purpose for the meeting (Haid, II, 377) and therefore Mr. Haid merely advised the members that they were to meet with Mr. Street in Mr. Haid's offices on May 2 (Haid, II, 377). Witness had no information that Mr. Street was coming in to New York prior to the meeting (Erskine, II, 348). He had no knowledge that the meeting would be called before it was called (Erskine, II, 347). In the Spring of 1935 witness was asked by telephone call from Mr. Haid's office to meet with some other gentlemen in order to discuss with Charles R. Street a question of settlement of the Missouri litigation (Barbour, I, 337). Witness was requested to come and attend the meeting (Barbour, I, 341). Witness received no advance information as to the meeting, except he was called to the metting (Warner, III, 351). Witness first heard of a compromise of this

litigation at the meeting (Culver, III, 398; Cartlidge, I, 462). Members of the meeting expressed the recollection that the notice of the meeting was given by Mr. Haid or his secretary (Kurth, I, 424; Cartlidge, I, 462; Koeckert, I, 495; Erskine, II, 348; Warner, III, 351; Culver, III, 398). Witness remembered or thought that the notice was by telephone (Culver, III, 398; Koeckert, I, 495-496). Witness is inclined to think the notice was a day, or several days, before the meeting (Koeckert, I, 496). Ordinarily, such notices of a committee meeting are by letter, or formal notice (Culver, III, 399). Mr. Erskine did not know the meeting was going on when it was in session. He had knowledge soon after. He first heard of the meeting either immediately after the meeting or within a day or two (Erskine, II, 347-348). Witness does not think he saw Mr. Street at all. If he did he did not talk to him, and he does not believe that anyone else of his office, except Mr. Haid, talked to Mr. Street (Erskine, II, 348). Shortly after the meeting, within that same day or within another day or two, Mr. Haid told Mr. Erskine that Mr. Street had come east to discuss with a number of executives the subject of the settlement of the Missouri rate case, and that Mr. Street had made arrangements to collect a sum of money they would need in connection with expenses thereof. Mr. Haid did not indicate what sum of money it was, and only told witness what it was for in the terms as just stated. Witness does not think Mr. Haid made any additional comments; none that he can recall (Erskine, II, 348-349).

As Mr. Haid recalls, Mr. Street was not in his offices prior to the meeting, and the gentlemen who were present all assembled about the same time. Witness recalls no communication by him with Mr. Street prior to the meeting, other than the telegram. Witness cannot tell what companies were represented at the meeting (Barbour, I, 340, 338).

Those present at the meeting and the companies represented by those present were as follows (see "I Witnesses" and "II Insurance Groups").

COMPANIES	EXECUTIVE
Group 11.	
1. Commercial Union Assurance Company, Ltd. 2. American Central Insurance Company 3. California Insurance Company 4. Commercial Union Fire Insurance Company 5. Palatine Insurance Company 6. Union Assurance Society, Ltd.	(1) F. W. Koeckert (Kurth, I, 424; Cartlidge, I, 463; Haid, II, 376; Koeckert, I, 495; Warner, III, 352).
Group 12.	
1. Continental Insurance Company 2. American Eagle Fire Insurance Company 3. Fidelity-Phenix Fire Insurance Company 4. First American Fire Insurance Company 5. Niagara Fire Insurance Company	(2) Bernard M. Culver (Kurth, I, 424; Koop, I, 396; Haid, II, 376; Culver, III, 398; Cartlidge, I, 463; Koeckert, I, 496; Warner, III, 352). (3) Mr. Sturm (Haid, II, 376) who was chairman of the board (see letterheads, Ex. 6, I, 51; Ex. 199, II, 316; Ex. 200, II, 318; Culver, III, 399).
Group 20.	
1. Great American Insurance Company 2. American Alliance Insurance Company 3. County Fire Insurance Company 4. Detroit Fire and Marine Insurance Company	(4) William H. Koop (Kurth, I, 424; Cartlidge, I, 463; Haid, II, 1232; Koop, I, 396; Warner, III, 352; Culver, III, 399-400; Koeckert, I, 496; Barbour, I, 345).

COMPANIES	EXECUTIVE
5. Massachusetts Fire and Marine Insurance Company	(5) Charles R. Street (See *supra*) (Also Erskine, II, 348; Warner, III, 352; Culver, III, 399; Barbour, I, 345, 338).
Group 23.	
1. The Home Insurance Company 2. City of New York Insurance Company 3. Franklin Fire Insurance Company 4. National Liberty Insurance Company of America	(6) Wilfred Kurth (Koeckert, I, 496; Cartlidge, I, 463; Haid, II, 376; Kurth, I, 424; Koop, I, 396; Warner, III, 352; Culver, III, 399; Barbour, I, 345, 338).
Group 34.	
1. The Northern Assurance Company, Ltd. 2. London and Scottish Assurance Corporation, Ltd.	(7) Robert P. Barbour (Kurth, I, 424; Barbour, I, 337; Warner, III, 352; Culver, III, 399; Barbour, I, 338).
Group 43.	
1. Royal Insurance Company, Ltd. 2. Federal Union Insurance Company 3. Liverpool and London and Globe Insurance Company, Ltd. 4. The Newark Fire Insurance Company 5. Queen Insurance Company of America 6. Star Insurance Company of America	(8) Harold Warner (Kurth, I, 424; Cartlidge, I, 471; Haid, II, 376; Warner, III, 351, 358; Culver, III, 399). (9) Harold T. Cartlidge (Cartlidge, I, 462-463; Warner, III, 352, 355, 358). (10) Paul L. Haid (Cartlidge, I, 463; Haid, II, 378; Warner, III, 352; Koop, I, 396) President of Insurance Executives Association.

Witness would say that there were not less than five nor more than fifteen present (Barbour, I, 338).

In addition to the above persons who attended the meeting, Mr. Haid said that the telegram requested the presence of Mr. J. L. Parsons, (president of Crum and Forster: See "I Witnesses") (Haid, II, 376), and Mr. Kurth and Mr. Koop said they thought Mr. Parsons was present (Kurth, I, 424; Koop, I, 396). The other witnesses did not testify that Mr. Parsons was present, and Mr. Koeckert, Mr. Culver and Mr. Cartlidge, though asked specifically whether Mr. Parsons was present, could not recall that he was (Koeckert, I, 496; Cartlidge, I, 463; Culver, III, 399).

Mr. Parsons, himself, testified that he did not attend the meeting (III, 319, 324-325) and that no official from his organization attended it (III, 319-320). Mr. Parsons testified that "somebody testified I was at that meeting, but I have definite proof here that I wasn't." Mr. Parsons has never been at any such meeting in his life. He was not present at any meeting on or about May, 1935, when approximately $60,000.00 was raised. Mr. Haid would not have called up Mr. Parsons on the telephone if the latter had been at the meeting (Parsons, III, 324). Thursday is a meeting day and they have quite a big list of corporations. On that day Mr. Parsons had three important meetings which occupied the morning. The meeting at Mr. Haid's office was in the morning (Parsons, III, 325).

Q. Do you happen to know whether Mr. Parsons attended the New York meeting?

A. Yes, sir (Wyatt, II, 163).

Mr. Parsons knew there were several men there. He knew there would be some of the head executives of principal companies, but he cannot testify as to any particular one. What he learned about it was just casual. No official from Crum & Forster or any of the companies which it represents attended that meeting to Mr. Parson's knowledge (Parsons, III, 319-320).

Mr. Parsons, as president of Crum & Forster, represented the companies under the management of his corporation, namely:

Group 56

1. British America Assurance Company
2. North River Insurance Company

3. United States Fire Insurance Company
4. Westchester Fire Insurance Company
5. Western Assurance Company
6. United States Merchants and Shippers Insurance Company

They were all well acquainted with Mr. Street (Kurth, I, 424) and these executives were all similarly involved (Kurth, I, 424). As witness recalls, the meeting was in the morning and as far as he remembers witness was present throughout the meeting. No secretary or stenographer was present (Haid, II, 378). The meeting was held in the daytime (Barbour, I, 338). The meeting was held in the morning (Koeckert, I, 499). Witness's recollection is that it was held about 2:30 in the afternoon (Culver, III, 399). The length of the meeting was estimated as follows: Perhaps 15 minutes (Kurth, I, 442) it might have been 20 minutes; one-half hour at the outside (Culver, III, 399); a little more than a half hour; not more than three quarters of an hour (Warner, III, 354); about an hour (Barbour, I, 339, 343); all of an hour if not an hour and a half (Koeckert, I, 496). Mr. Koeckert thinks he left the meeting at the time when it broke up (Koeckert, I, 499). Mr. Koop had a meeting of his finance committee that day and got there late. The meeting was about ready to break up when he arrived (Koop, I, 396).

In this particular meeting Mr. Haid really had no function to perform. He represented no company that was asked to put up any money, and he was not asked to put up any money. He had no supervision over what would be done with the money, and, as a matter of fact, should not have been in the meeting. He "butts into" a lot of situations. He knew them all. Mr. Street had not asked Mr. Haid to meet with them, but they were in his office, and he just walked in (Haid, II, 389).

There was no formal organization of the meeting by the election of a chairman (Warner, III, 352). There was no formal action taken at this meeting that witness recalls (Barbour, I, 340). Witness does not recall that any action was taken. This was an informal meeting (Barbour, I, 341). One witness (Culver) is quite sure, and according to the knowledge of another (Haid) no minutes or notes were made of the meeting (Culver, III, 399; Haid, II, 378). Witness knows of no notes or memoran-

dum made by anyone concerning the action at the meeting (Barbour, I, 338). There was no secretary (Culver, III, 399). Witnesses who were asked, each said that he made no such minutes or memorandum (Barbour, I, 338, 344; Culver, III, 399; Haid, II, 378; Koeckert, I, 496; Kurth, I, 440). Mr. Street gave no details whatever (Barbour, I, 340, 342). There was discussion about the Missouri litigation but witness does not recall or remember what anyone who attended the meeting said, and he cannot tell whether anything was said (Barbour, I, 340). He did not charge his mind with it particularly (Barbour, I, 344). He recalls no discussion of details, and nothing about getting any part of the impounded premiums back (Barbour, I, 344). He remembers nothing beyond listening to what took place and hoping that the cases would be gotten out of the way (Barbour, I, 340). Mr. Street gave no details about what the negotiations had been up-to-date and did not tell them what his negotiations were to be, nor where, nor when they were to be (Cartlidge, I, 470). When he left witness did not know what might be settled by those who had so much greater interest than his companies had, and was content to leave it in their hands. He does not remember the figures on his interest (Barbour, I, 344-345). At this meeting witness did not ask Mr. Street what the terms of the settlement would be (Barbour, I, 340).

Witness thinks possibly Mr. Haid made some little announcement that they were there to listen to a statement by Mr. Street in connection with the Missouri rate case (Culver, III, 499).

Mr. Street (to the best of witness' recollection) did all the talking (Koeckert, I, 496). He made some sort of a statement (Barbour, I, 339). Witness did not ask Mr. Street any questions (Warner, III, 355). If it had not been for the fact that he might not get an answer from Mr. Street, witness does not think he would have asked anyhow (Warner, III, 355). Mr. Street addressed the meeting (Kurth, I, 424; Barbour, I, 339) and said that the meeting was called to discuss the Missouri litigation (Kurth, I, 424), or that he wished to talk about the Missouri rate litigation (Warner, III, 352). The opening statement was that Mr. Street wanted to discuss the settlement (Barbour, I, 339). Mr. Street wanted to talk with some of the Eastern officials with respect to possible settlement of the Missouri litigation (Barbour,

I, 338). He did not tell them the tentative plans of the settlement. He told them that he had a settlement under consideration and that negotiations were to be undertaken (Barbour, I, 340). He opened the meeting by saying he had been endeavoring to make a compromise of that litigation, and had been in communication with the officials (Haid, II, 380). Witness does not recall any discussion about any Missouri person (Cartlidge, I, 468). He heard no mention of any Missouri people (Cartlidge, I, 469). To witness' best recollection, Mr. Street did not name anyone with whom he would be conferring (Culver, III, 400) or with whom he would be negotiating (Cartlidge, I, 463). Various witnesses said they did not hear any mention, or that they have no knowledge or recollection of any mention of the following persons: Pendergast (Koeckert, I. 514; Cartlidge, I, 469), Hicks and Folonie (Cartlidge, I, 471). The Superintendent of Insurance (Kurth, I, 427), a powerful man in Missouri (Cartlidge, I, 468), any specifically named official (Cartlidge, I, 469), the political bosses, or any named person (Cartlidge, I, 469; Kurth, I, 427).

He probably did mention a powerful person in Missouri, but if so, witness does not recall it nor what was said about him in connection with the compromise. He did not say much about the powerful person and witness does not think he said anything, but witness will not say offhand; he does not recall (Koeckert, I, 515, 527). He might have referred to one or two officials to the judges of the federal court or to Mr. Hyde, the superintendent (Cartlidge, I, 469). He said "the authority." Witness does not know whether he meant the insurance department officials or what he meant. Witness remembers that he said there was "a powerful person in Missouri," but does not think he went so far as to say "who might help him get this compromise through" (Koeckert, I, 514-515). Witness assumed it was the authority of Missouri, presumably the superintendent of insurance (Cartlidge, I, 463). He might have referred to any official in Missouri (Cartlidge, I, 469). He said that he had been in communication with the officials from the State of Missouri (Haid, II, 379). Witness understood that he meant the Missouri officials, but does not recall that Mr. Street stated anything about his conversations, and no one (to witness' knowledge) asked him the name of the officials with whom he had been in contact (Haid, II,

380). He did not say that he had been in communication with any person other than the officials (Haid, II, 380). He did not say when or where he was going to contact these officials again (Haid, II, 381).

He did not mention any powerful interest in the same breath or in the same connection with the money he had to have for legal expense (Koeckert, I, 515). He did not refer to the officials in connection with the money to be raised (Cartlidge, I, 468-469).

Witness understood that a compromise was pending (Warner III, 360). So far as witness knew or was advised, Mr. Street had not talked to anyone about a compromise (Koeckert I, 498). He does not recall that Mr. Street said that he had had any negotiations up to that time. Witness got the idea that Mr. Street had certain things in prospect that he wanted to develop if it was agreeable. Witness did not understand that Mr. Street had talked with anyone. So far as witness knew, Mr. Street had done nothing toward the compromise. It is witness' impression that he had no information that Mr. Street had ever talked with anyone, but that all of the compromise and all of the negotiations were in the future (Koeckert I, 498). Witness does not know that he thought, when he put up a check, that it would help bring about a settlement (Cartlidge, I, 467). As witness understood, the money was raised before the settlement was made with Mr. O'Malley, the Superintendent (Kurth, I, 425). Witness did not think it a little unusual that, when he paid this money, he would be paying his lawyers right before the settlement instead of immediately afterward. That did not occur to him as unusual (Kurth, I, 438). Mr. Street had requested a meeting to designate him as agent of the companies. There was discussion about it. Witness does not recall any of the discussion about designating Mr. Street as agent but he does remember that there was some. He does not recall that they objected to Mr. Street acting as agent (Barbour, I, 340). Witness does not known whether Mr. Street thought that he was acting as agent for the companies (Barbour, I, 341). Mr. Street did not suggest that it would be necessary that he be designated as agent. He said of course that he would have to act as agent for the companies in the matter and that he could act better than a committee (Barbour, I, 341-342). He told them it would have to be understood that he was acting on behalf of the companies. Witness did not au-

thorize Mr. Street to act for his company (Barbour, I, 340). Mr. Street felt it could be done better by one man than by a committee; that there were numerous matters growing out of the litigation that had to be dealt with; that he was familiar with all of them, and if the companies would place the matter in his hands that he could arrive at a final and definite settlement; that to carry this out it would have to be understood that he was acting as agent for the companies involved and that he would need to be furnished with money in connection therewith (Barbour, I, 339).

This matter had been going on for a very long time (Warner, III, 352) and Mr. Street stated that he had recently (Warner) or for some little time (Haid) been trying to effect a compromise or settlement (Warner, III, 352; Haid, II, 379). He may have used both the word "compromise" and the word "settlement" (Koeckert, I, 503). He said he was going to make a settlement. Witness does not remember that Mr. Street used the word "compromise," but he does not know (Koeckert, I, 503). He indicated that he believed that a settlement could be effected (Haid, II, 379) or that a compromise was possible (Warner, III, 352; Cartlidge, I, 463) or that the time would come when some sort of settlement of the rate case could be made (Koeckert, I, 496) on a basis which, he believed, would be quite agreeable to all of the companies involved (Cartlidge, I, 463). He expressed optimism as to his ability to make a settlement. No questions were asked as to what was the basis of his optimism (Culver, III, 400). He referred to all of the complaints about this thing dragging along so long (Warner, III, 352), about complaints from agents (Warner, III, 352), the insistence (Haid) or a considerable amount of pressure brought to bear (Warner) by agents (Warner, III, 352; Haid, II, 379) and certain Missouri Chambers of Commerce to bring about some sort of settlement and termination of the matter (Culver, III, 400). He had had communications from the Chambers of Commerce of St. Louis, Kansas City and St. Joe (Haid, II, 379). Witness has a dim recollection of Mr. Street saying something about chambers of commerce and he felt that there were a good many companies who would like to see the thing out of the way, and he wanted to ask those present if it was agreeable to them that he should attempt to bring about a compromise (Warner, III, 352). Mr. Street believed that the litigation could be settled if he was given

the authority to carry out the negotiations (Barbour, I, 339). He thought that the time had come when, if a satisfactory compromise could be made, it was a desirable thing to do. He recommended to the executives present that they approve his going forward with arriving at a settlement (Haid, II, 379). It did not impress witness at all, why he would need this amount of legal expense to effect a compromise. They were dealing with a $9,000,000.00 case (Warner, III, 360). In no respect whatever did Mr. Street raise witness' suspicion (Warner, III, 368). Witness does not think there was any unexpressed inquiry in his mind as to why the sum had to be raised. He thinks his mental reaction was that this, like many other affairs in their business, was in the hands of the Subscribers Actuarial Bureau, represented by Mr. Street; that Mr. Street had asked for this, as they do in all these matters where all the various companies are interested. "When it is in their hands we have faith enough in each other to just follow them." Witness did that in this case. It did not strike witness as unusual at all for money to be raised for attorneys' fees in that manner. He cannot say whether it had ever been done before; not that he can recall. In the light that the attorney is putting it today, it becomes unusual. At that time it did not strike witness that way in the slightest (Warner, III, 353-354). Witness knew that Mr. Street was raising the money before any compromise was made (Kurth, I, 425). They talked about it in general terms and about the advisibility of Mr. Street undertaking negotiations to settle it (Barbour, I, 345). He knew that Mr. Street expected them to contribute money in order to get started on negotiations provided that they agreed to the plan in this was all preliminary and so far as he knows there was no discussion of that whatsoever. Nothing was said to indicate that it was preliminary, it merely was preliminary. It was a meeting that first discussed or coming together of men who first discussed it. Witness attended no further meetings and knows of no further meetings and got no information about any further meetings (Barbour, I, 343).

He was really asking for authority to proceed with the negotiations. Nothing was asked as to the certainty of effecting the compromise that witness recalls (Haid, II, 385). Although he could not assure them with any certainty (Warner, III, 352). Mr. Street be-

lieved (Cartlidge) or indicated a hope (Warner, Haid) that a compromise or settlement could be made on a 90-10 basis (Haid, II, 385, 380) 10 per cent to the policyholders or property owners (Warner, III, 352; Cartlidge, I, 463) and 90 per cent to the companies (Warner, III, 352). Witness has a recollection that Mr. Street said something about being able to return 90 per cent to the companies and 10 per cent to the policyholders. That is as far as he recalls Mr. Street having said anything (Koeckert, I, 498). Witness believes that Mr. Street mentioned that there was a possibility of getting this settled on a 90-10 basis—90 per cent of the impoundings to the companies (Kurth, I, 425). Mr. Street felt that there was a pretty fair chance that he would be able to effect a compromise on a basis of 20 per cent being returned to the policyholders and 80 per cent returned to the companies. That may have been amplified, but as witness remembers, that was the substance of his statement (Culver, III, 400).

In addition, upon the insistence of agents, the State of Missouri was to be given the change in policy forms and contracts and various other broadening features which has for some years been in effect in adjoining states, and which agents in Missouri were demanding, and Mr. Street expected to arrange and endeavored to arrange a new rate filing which would be reductions in rates on some of the more desirable classes of properties in Missouri. Witness is quite sure that Mr. Street went into some explanation of that situation (Haid, II, 380-381).

Mr. Street did not detail the present status of the litigation, or the shape it was in at that time (Warner, III, 354). He did not tell the terms of the compromise (Koeckert, I, 499). Witness does not recall that he suggested any terms, amounts, or any plan (Koeckert, I, 496). Asked whether Mr. Street said that the Actuarial Committee had recommended the settlement, witness replied "He didn't tell us anything." Witness knew that the committee had not. If the compromise was brought up in the committee, witness either was not there or he does not recollect anything Mr. Street said (Koeckert, I, 516-517).

Witness thinks that Mr. Street then said that, having gotten a rather favorable reaction (which witness thinks was quite natural) that there were certain legal expenses that would probably accrue in connection with this settlement and would have to be met, if it could be had,

and he hoped that ten or a dozen companies would be willing to advance it and the money would be used for such purpose (Culver, III, 400). He said he wanted this money to discharge certain legal expense, including attorney fees, that he wanted to get settled first (Koeckert, I, 503). He stated that it was necessary at this time to provide funds (Cartlidge, I, 463-464, 467) for certain expenses (Cartlidge, I, 463) in connection with negotiation for settlement (Cartlidge, I, 467, 468) before any settlement could be made (Cartlidge, I, 463-464) that he would require (Warner) or needed (Haid, Koeckert) or had to have (Koeckert) or wanted to raise (Kurth) some money (Kurth, I, 424; Barbour, I, 342) for legal expenses (Warner, III, 352; Koeckert, I, 515, 498; Haid, II, 381, 379). When Mr. Street said he wanted this for legal expense, that was when he got the first money (Kurth, I, 444). He was unable to determine what the total amount of the expense would be (Haid, II, 379). Mr. Street did not explain any more to witness as to why this was needed before any settlement was negotiated. Witness did not follow through as to whether Mr. Street had to pay the companies' lawyers before they could go on with the settlement, or why they could not pay their lawyers after the settlement. It did not occur to witness (Kurth, I, 425).

It was to be used for legal fees in connection with the compromise (Koeckert, I, 498; Koop, I, 396). Witness does not remember Mr. Street's having told them that it was legal expense (Cartlidge, I, 470). He said it was expenses (Kurth, I, 424). He mentioned legal expenses in a general way (Kurth, I, 425). He said there would be expenses in connection with it, but he did not specify what expenses (Barbour, I, 342). Witness knew that Mr. Street was in fact requesting them to deliver money to him for expenses provided it was agreed upon that he was to enter into negotiations for the settlement (Barbour, I, 342). Witness thinks Mr. Street had something to suggest in the way of certain funds needed to be set up in order to provide for preliminary expenses. Mr. Street felt he needed the money (Koeckert, I, 497). He did not tell a single expenditure that would be made (Koeckert, I, 499). Witness does not think that Mr. Street made reference to any specific expenses, except that they were legal expenses (Culver,

III, 400). That is the only explanation he gave (Haid, II, 381).

Witness did not ask why Mr. Street would need legal fees to make a compromise (Haid, II, 383; Koeckert, I, 498). Witness never gave a thought one way or the other to what legal expenses had to be arranged for a legitimate compromise of the case (Haid, II, 383). No one made any inquiry as to the nature of the legal expenses (Warner, III, 354). Witness did not ask what legal fees, or whether it was for lawyers (Kurth, I, 438). Mr. Street did not tell to whom he was going to deliver the money (Barbour, I, 343). Witness does not recall that anybody asked why the money was necessary or to whom it was to be finally disbursed (Cartlidge, I, 468). Witness never had any talk with Mr. Street at the meeting about to whom he was going to turn over the money (Koeckert, I, 511). No question was asked as to what it was for (Haid, II, 381) or what the legal expenses would be (Culver, III, 400). Witness did not know what his purpose was and never had any idea in his mind that Mr. Street wanted it for the purpose of employing other counsel (Haid, II, 388). He does not not know that it was not to be used for the purpose of employing other counsel (Haid, II, 389). Other than the employment of additional counsel, witness can conceive of no other legal expenses necessary for a legitimate compromise of this case (Haid, II, 389). Witness could at that time conceive of no expense "that they could not make a settlement." The reason was not stated (Kurth, I, 438; Cartlidge, I, 467) and witness did not question it at all (Cartlidge, I, 467) witness understood it to be for attorneys (Haid, II, 381).

Mr. Street was in Chicago with the Fidelity-Phenix at the time of the Kansas rate litigation and the Arkansas rate litigation. Mr. Haid does not remember that when those cases were settled the companies always paid the attorneys for the state; so that did not affect his judgment at all (Haid, II, 384-385).

His explanation of legal expenses seemed sufficient to witness (Haid, II, 381). So far as witness personally was concerned, Mr. Street's mere mention of the fact that he wanted to raise $100,000.00 in connection with the Missouri litigation and that it would be fully accounted for, was sufficient (Kurth, I, 425).

Counsel read witness a memorandum, stating:

> "It is necessary in carrying on this activity to use temporarily $100,000.00 which will be accounted for when the settlement is made. We are asked to contribute our portion of this sum as shown below."

Witness said that substantially that happened in this meeting (Cartlidge, I, 470).

Witness understood he was paying legal expenses in connection with the Missouri litigation (Warner, III, 359).

Witness' recollection was that Mr. Street did not connect the money with the settlement. He was endeavoring to make a settlement, and he stated that he needed it for legal expenses in connection with the Missouri litigation; not with the settlement (Haid, II, 387).

It was legal expense "not necessarily would approve a compromise" (Warner, III, 360). He did not tell them that if they raised $100,000.00 he thought he might be able to make a settlement. As witness recalls, it was not contingent on that (Cartlidge, I, 467). Witness does not remember or cannot recall that Mr. Street said anything about the return of the money (Culver, Warner) or any part of it (Warner) in the event the settlement could not be put through, and witness thinks that no one present asked him (Culver, III, 401; Warner, III, 354). Mr. Street did not tell witness with whom he had discussed the compromise (Warner, III, 360).

Asked what legal fees he had in mind that Mr. Street would have in trying to make a compromise, witness said there was such an army of lawyers employed at all times that he would not have been surprised if he had two or three more. At some of the committee meetings, Mr. Street let drop that lawyers had something to do with the compromise. Mr. Street did not say anything about what lawyers' services would be required in connection with the compromise. If he did, witness does not recollect it, and witness never asked him. It was not necessarily fees, but legal expense in connection with the compromise (Koeckert, I, 498-499).

He did not say to whom attorneys' fees were to be paid (Warner, III, 353). There was no discussion about the attorneys in any way, and no mention of any names of any attorneys within witness' recollection. Witness

knew that the attorneys were on a regular fee basis, being paid through the Missouri Inspection Bureau, and he made no inquiry as to why this sum of $100,000.00 had to be raised for legal expense at that time (Warner, III, 353).

Witness was asked if he could conceive of any legal expenses that would be necessary to effect a legitimate compromise. He answered "yes," but it is so intimate and personal that he hesitates to give the reason. He was aware of the antipathy between Mr. Folonie and Mr. Street, and he can conceive that Mr. Street, having ignored Mr. Folonie in a good many of the more recent situations that had taken place immediately previous, may have wanted to secure other counsel in Missouri. Mr. Street did not in words say that he wanted it for the purpose of employing other counsel. Witness had no information from Mr. Street about the employment of other counsel. Mr. Street gave no inkling of any employment of other counsel, and such a suggestion was not made or mentioned in any way by any person at the meeting (Haid, II, 383-384).

Mr. Street said he had come East to ask a number of companies to advance $100,000.00 (Haid, II, 379). He asked for volunteer amounts (Haid, II, 379). He said he needed $100,000.00 (Haid, II, 381; Koeckert, I, 498, 499). He mentioned that figure (Kurth) as the amount (Cartlidge, Koeckert) or the approximate amount (Warner) to be raised, or that he wanted to raise (Kurth, I, 426; Cartlidge, I, 464-465, 471; Koeckert, I, 499; Warner, III, 352) for expenses (Cartlidge, I, 465). Witness does not recall that Mr. Street talked something about the amount of money (Barbour, I, 342). He got no idea whether it was to be $100.00 or $100,000.00 that was to be raised. He does not recall that there was any discussion whatsoever of the amount that might be needed (Barbour, I, 343). He does not remember that Mr. Street told them that it was necessary to raise $100,000.00 in both groups (Barbour, I, 342).

Witness never heard the sum that Mr. Haid was to collect after the meeting of May 2, 1935. He has some idea of what that sum was, but it came about in an entirely different manner, and many months later; he thinks just about a year. He did not hear it; it was a matter of calculation on his part. When they were making credits, applied to sums of money that they were collecting on the

5 per cent (Erskine, II, 350), in that way he found out that some such moneys had been paid in. He does not believe he can give the sum except in a very round number, and is sure that would be only an approximation. Mr. Haid never told witness the amount of money raised at the Haid meeting (Erskine, II, 350). Mr. Street never told him the amount. He never had any conversation with Street, and no one else ever told him. He got this information a year later (Erskine, II, 350).

It was Mr. Street's intention to present the matter to those who were in the room (Cartlidge, I, 464). He did not want to take it up with all, or with the remainder of the companies (Cartlidge, I, 465; Koeckert, I, 497). Witness does not recall that Mr. Street said anything about calling in just a few to talk over the matter (Koeckert, I, 497). Witness cannot say that Mr. Street did not have it in mind to submit it, at least in some form or other, to the other companies, but nobody asked him and he did not state (Culver, III, 415). Witness thinks it was implied that the others were not to be advised at the time about raising this fund; he thinks he so understood it (Cartlidge, I, 466). Witness is quite sure Mr. Street never talked to him about getting assent from the smaller companies. He does not know whether Mr. Street talked to the smaller companies about settling the case, nor whether Mr. Street made any reference to that (Culver, III, 402). He had a special group subscribe a sum that would permit him to pay these preliminary expenses (Koeckert, I, 497). He wanted to raise a certain sum and picked on the companies largely interested for the larger portion (Kurth, I, 426).

He was asking this as an advance (Warner, III, 353). It was an advance (Haid, II, 379; Cartlidge, I, 470). He said that he was asking these companies to make this advance (Haid, II, 379) rather than getting a pro rata advance from all companies, on account of the physical work obviously involved (Haid, II, 379). Witness thinks that no explanation was made other than that the ramifications and complexities of the Missouri situation (were such that) to explain to all companies involved would be almost an impossible procedure toward the negotiations (Cartlidge, I, 465). To advise other companies would involve explanations which would take in a town meeting with all companies involved acquainted with the facts (Cart-

lidge, I, 466). Witness thinks that anybody who said he had a pretty fair chance of settling the Missouri rate case they would not argue much about having the other companies brought into it (Culver, III, 415).

He thought he would get together some of the larger companies, those with the largest interest, and raise the $100,000.00, thus saving the delays occasioned by applying to all companies interested (Kurth, I, 424). Witness got the impression that Mr. Street was asking the companies present, who represented a very large interest in the entire picture, to make these advances rather than to go to the trouble of bothering to assess the whole 137 companies (Warner, III, 354). He said that a canvas of 137 companies would take some time. Some of them had a very small interest; the companies present were largely interested, and he wondered if they would not prepare to volunteer a lump sum (Warner, III, 352). Witness thinks Mr. Street made the statement that, rather than go to each one of the 140 odd companies, he conceived the idea of ten or a dozen of the large companies acting, say, in an underwriting capacity (Culver, III, 401). Rather than bring the matter before all the companies involved in the federal case and discuss the situation, he thought it better to discuss it with some of the principal companies involved in principal sums (Cartlidge, I, 464). The idea was that it was easier to do it this way, and the result come out the same in the end, which it did (Culver, III, 401). It was in connection with raising the money that Mr. Street said it was impractical to get these smaller companies together (Culvert, III, 401). It was a substitute request for a sum in lieu of getting it from all of more than 100 interested companies in order to avoid the detail (Kurth, I, 438).

Witness has known subsequently, but cannot say clearly whether at the time of the meeting it was clear in his mind that there was to be a total of $100,000.00 raised by Mr. Street (Clark, II, 417). When he said he wanted the money for legal expense, that was when he got the first money (Kurth, I, 444). No one, to witness' recollection, asked Mr. Street if the compromise did not go through how they would be reimbursed for the advancements. So far as witness knows that did not occur to any man (Haid, II, 386). Witness does not recall that Mr. Street said anything about attorneys' fees being returned in the event the compro-

mise was not made (Warner, III, 353). The condition was not stated at the meeting (to witness' knowledge) that the money was to be turned over to Hicks and Folonie, but not to be delivered unless the settlement was effected (Cartlidge, I, 470). Witness recalls no such statement (Haid, II, 387-388). Witness never heard that wording until just now. He never had a word with Mr. Street about it (Koeckert, I, 511). Presumably it would be turned over to Hicks and Folonie, but whether that was stated witness does not know (Cartlidge, I, 470). The assumption was that the $100,000.00 was to be classed as all other contributions to Missouri rating organizations, assessments on all of the companies, if the negotiations were not successful (Cartlidge, I, 468). The way witness' mind worked was, there was no question in his mind but what, if the compromise was not made, the checks would be returned without any question whatsoever, unless Mr. Street had expected to or had incurred legal expenses by which the lawyers would have to be paid. Witness did not have an idea that if the compromise were not made the money would come back. He had the idea that if the money was not used by Mr. Street, then it would be returned (Haid, II, 386-387). At the meeting they understood that the money would be reimbursed to them (Cartlidge, I, 492). Mr. Koeckert thinks he left the meeting (of 1935) under the impression that he was going to get the money back which he had advanced for attorneys' fees.

"Q. Then your common sense told you it was not for attorneys' fees, didn't it?

A. I may not have had any common sense about it.

Q. Whatever you had did tell you that, didn't it?

A. Probably so."

But he could not say that he knew in his own mind that Mr. Street was naming this "attorneys' fees" when it was not to be used as attorneys' fees, but he still maintains that if Mr. Street said attorneys' fees, he meant it (Koeckert, I, 514). Witness advanced the money on the theory that in some way they would get it back at some future time. If the settlement were not made, he did not know when, if ever, they would get it back. They have passed many thousands of dollars in Missouri litigation that they never knew when they would get it back (Cartlidge, I, 466).

Mr. Street gave his word that there would be an accounting. Witness does not mean to imply that they would get all the advance back, but they would at least get their proportion back (Culver, III, 401). Mr. Street emphasized the fact that they would have a full accounting (Kurth, I, 425). It was made with the understanding that in due time there would be a full and proper accounting of the whole thing, and that whatever expenses incurred would be allotted over the whole of the companies in accordance with their interests, and with that, witness was quite content (Warner, III, 352-353). Mr. Street very definitely gave assurance that they would get a complete accounting. Witness thinks that was mentioned; that is what witness counted on, that it would be explained (Warner, III, 368). In other words, they would underwrite this $100,000.00 which would eventually be accounted for and return it on a proper pro-rata basis (Culver, III, 401). Subsequently, these companies would be given credit for the advance that they presently made (Haid, II, 379). They would have a credit on that for any further demand made, in the final cleanup of the accounting (Kurth, I, 440). Whatever Mr. Street did was all right with witness on his assurance that there was going to be a proper accounting for it (Kurth, I, 442). The accounting was in connection with raising a proper sum of money from all companies not present (Culver, III, 402). Witness' companies' percentage of the impoundings was about 8 per cent. Based on that figure, they might have contributed $8,000.00 as a final contribution, if there was nothing ever coming back (Culver, III, 401-402). Witness thinks that Mr. Street did not say anything about making an accounting of the purposes for which the money was devoted. He has no recollection of it (Cartlidge, I, 493).

Witness referred to the situation as "delicate in the extreme" (Cartlidge, I, 463). He got the impression that an extremely delicate situation existed in Missouri in regard to this compromise. He does not know what was delicate about it (Cartlidge, I, 463-465). Mr. Street did not (to witness' knowledge) say anything about what the delicacy of the situation was (Cartlidge, I, 467). He did not see Mr. Street outside the meeting and he talked to no one else about the meeting afterward (Cartlidge, I, 469). In a general way he understood that it was to be kept in confidence, and that it was common knowledge

that a delicate situation existed in Missouri (Cartlidge, I, 466). Witness did not know that the $100,000.00 was to be used for a secret purpose. Mr. Street did not tell witness it was delicate; those were witness' impressions, rather than the words which Mr. Street used. One of the principal reasons was because of the confidential nature of the meeting which was held. Witness presumes it could be called a confidential meeting just between a few of them. It was not witness' impression that it was a matter that could not be imparted to the remainder of the companies at this time. He cannot tell why it was confidential (Cartlidge, I, 465-466). Witness did not understand that this was a confidential meeting. He knew that everybody that had an interest in the matter possibly was invited, whether they went, he does not know (Koeckert, I, 497).

Mr. Street certainly did not convey (the idea) to witness that a delicate situation existed, or words to that effect (Koeckert, I, 497). He did not say anything from which witness inferred, or from which anybody could infer, that there was anything mysterious, delicate, or secret about the transaction (Warner, III, 368). Witness got no impression of the meeting being of a confidential nature. He would have been quite ready to discuss it with anybody in the business that he met on the street. He did not do so, so far as he recalls, except with his own colleagues in the office who had been really more responsible for handling the details than he was. Witness only went to the meeting because he "takes the meetings" (Warner, III, 354). Witness did not hear anybody mention whether this was to be legally applied or whether there was any bribery involved in it. He heard nothing of that kind (Kurth, I, 427). Of course, he supposed Mr. Street would make proper use of it (Kurth, I, 442).

As to the necessity of raising the money, witness cannot remember the word "immediately" being used. No impression is left on his mind of any tremendous urgency about it (Warner, III, 354). Mr. Street did not tell witness at any time that there was an urgent need for this money, any more than he told it at the meeting. Street may have said that at the meeting. It may have been there was an urgent need for it (Koeckert, I, 502-503). He said something about he wanted the money soon; he did not stipulate any time. If the reason of the meeting was to raise the money quickly, witness did not so get it. It may have been (Koeckert, I, 499). Witness is not so sure

that he, himself, was in a hurry to get out the check. He does not recall. He did not realize it was on the same day (Koeckert, I, 502). Mr. Street did not tell how quickly he expected to effect the compromise, that witness recalls. Witness knew from his conversation that it was imminent. He stated that he would like to have this money as soon as he could. Witness assumes that he had a definite impression that there was an immediate need for the money in order to effect a compromise (Haid, II, 382).

Witness does not recall that any action was taken at this meeting endorsing in any way what Street said. It may have been done, but if it was, witness has no recollection of it (Koeckert, I, 497). Witness had no conversation with Mr. Street, nor did he take part in any definite action (Barbour, I, 341). He did not agree to raise some money. He does not remember what was said about it. They probably said something about that Mr. Street needed money (Barbour, I, 342). Witness assumes that someone told Mr. Street that they would let him know what the action of the parties present would be at a later date (Barbour I, 345).

So far as witness was concerned, he would have been very happy for any settlement of the rate case. He was being pestered with telegrams from agents and people who were interested in having the thing settled, after so many years of apparently troublesome times. It is witness' impression of his own feeling as to what Mr. Street was suggesting, that if a settlement could be made, they who were there would be willing to let it be done. Witness knows that he, for one, left the meeting quite willing to subscribe to a fund that would allow Mr. Street to do the thing he said he wanted to get rid of first—certain legal expenses (Koeckert, I, 496-497). Witness wanted a settlement of the case (Barbour, I, 341). What he took away from there was that all the men who were there would be happy to get the Missouri litigation out of the way (Barbour, I, 341). Witness was very anxious to get rid of the litigation as well as all other troubles (Barbour, I, 344). Witness was not nearly so much interested in the terms as in getting it out of the way. He would like to get rid of it and not have that something to think about (Barbour, I, 340). Any compromise that was carried through would have been satisfactory to witness to get it out of the way, even if he lost all of his im-

pounded premiums. It would not have been just or equitable, but he would have liked to get rid of it and out of the way (Barbour, I, 349). Witness denies that he testified that the litigation had reached a point that he would not care if he lost all of his impounded premiums; but asserts that he said that he would have been willing to have it settled and out of the way even if it cost them their impounded premiums in order to have the litigation over and done with. In its effect the litigation was important to his company since it bore on rates; but he permitted it to be settled without knowing the terms of the settlement because it was in the charge of men whom he trusted (Barbour, I, 357-8). It was agreeable to all of them that Mr. Street go ahead and settle the case. There was no objection to that whatever from anybody present (Culver, III, 414). He thinks everybody was just delighted that there was a possibility of settling this controversy which had been going on for years and years, and here was a man that everybody had confidence in. Mr. Street said he thought he could compromise, and everybody said, "All right, Mr. Street, you go ahead and do it." That is why we assented (Culver, III, 415). Mr. Street's request for $100,000.00 with full accounting seemed to be reasonable and it was cheerfully subscribed (Kurth, I, 425).

It was Mr. Street's purpose to secure this advance from the companies in New York and Hartford (Haid, II, 379). Witness thinks it was indicated that not all was to be raised in New York because Mr. Street mentioned the fact that he was leaving for Hartford, to be there the next day (Cartlidge, I, 471). Witness knew that Mr. Street was going to Hartford the next day. He told them that in the meeting. If he told what portion the Hartford men were to raise, witness does not recall (Koeckert, I, 511). He did not expect to get the whole $100,000.00 at New York (Haid, II, 382). It was his purpose to explain it, probably on the following day, to companies domiciled in Hartford, Connecticut (Cartlidge, I, 464). He was going up to Hartford and discuss the matter with some Hartford officials. He told them he was going to Hartford but witness does not recall when he was going (Barbour, I, 341). Witness said he was going to Hartford to discuss the matter with the Hartford officials, but witness does not recall that he said he wanted to take some message to the Hartford group as to what their action was (Bar-

bour, I, 343). Mr. Street was going to Hartford and witness does not remember what was to happen after he went to Hartford. Witness does not know that Mr. Street said he was going to Hartford for the same purpose (but it is assumed to be that" (Barbour, I, 345). Mr. Street said he was going to Hartford (Barbour, I, 342). Mr. Erskine did not go to Hartford with Mr. Street and never knew that Mr. Haid went to Hartford with him (Erskine, II, 349). Witness does not recall whether Mr. Street stated that he had been to Hartford the day before or was going to Hartford the subsequent day, but he was going to collect the remainder of the $100,000.00 from Hartford companies (Haid, II, 380). He either said he had been or was going there (Kurth, I, 426). As witness recalls, certain gentlemen present volunteered to advance specific sums, and $62,500.00 was advanced by different companies who were present, plus Mr. Street's own advance (Haid, II, 379-380, 382). Witness does not know that they agreed to raise $62,000.00 and does not remember any discussion of any amount (Barbour, I, 342). He does not remember that Mr. Street said he needed $62,500.00 from the New York group and $37,500.00 from the Hartford companies (Barbour, I, 342).

Witness does not recall how much money was raised at the meeting nor any other company's amount. The amounts were evidently fixed at that meeting because witness' check was issued at witness' office the same day, but after the meeting. There was not the slightest doubt about how much witness' own company was to pay (Kurth, I, 443-444). Witness found out afterward that Street raised some money in Hartford (Kurth, I, 426). Witness never heard anything about the Hartford meeting. He heard no report from that (Erskine, II, 349).

Witness is not certain whether Mr. Street told them approximately how much was to be raised in New York and how much in Hartford (Cartlidge, I, 471). Witnesses do not recall (Cartlidge) or do not know (Cartlidge, Culver) how much was raised in New York, or by the New Yorkers (Cartlidge, I, 471; Culver, III, 405) before Mr. Street went to Hartford (Culver, III, 405). Witness does not recall whether Mr. Street was going to raise all the money in New York or partly in Hartford (Kurth, I, 426). He was apparently satisfied with the contributions from New York (Haid, II, 382). It seems

to witness that there was some discussion of how it could be raised in New York (Cartlidge, I, 471).

As witness recalls, various gentlemen present volunteered to advance Mr. Street certain sums (Haid, II, 379).

To the best of witness' belief, each of those present said for himself "Well, under the circumstances, we will be glad to provide funds," each with a definite amount (Cartlidge, I, 464).

As witness recollects Mr. Street had made a rough calculation that, for instance, the Continental and the Home probably had the largest amount of impoundments; and witness thinks he pulled out of the air an idea that their contribution might be $15,000.00 each, and the Great American so much, based on no definite figures. Witness does not remember whether he read off the assessments but presumes he did, because that is what was finally done. Mr. Street said, "Are you willing to contribute $15,000.00?" and witness said, "Yes," or words to that effect (Culver, III, 401). His company's (Continental group) assessment was fixed at $15,000.00 (Culver, III, 402). The only subscriptions he definitely remembers were both for $15,000.00 (Culver, III, 405).

Witness' companies (Home group) were put down for $15,000.00 by general agreement (Kurth, I, 425-426).

Witness' companies (Royal group) said they would provide, or they voluntarily advanced, $10,000.00 (Cartlidge, I, 464, 465, 467).

X.

PAYMENT OF THE 1935 ADVANCE BY THE NEW YORK COMPANIES. THE KNOWLEDGE AND ACTIONS OF THEIR OFFICERS.

IN GENERAL.

Immediately at the close or immediately following the meeting Mr. Street handed Mr. Haid a little list or small slip of paper on which were mentioned certain companies and amounts of advances that they were going to make at his request. The slip was for use in assembling the checks. Mr. Street asked Mr. Haid to have these checks sent to Mr. Haid's office, and Mr. Haid kept the list for the time being. He has no idea where that slip of paper is. He assumes he destroyed it immediately. He kept it until he had received the checks, and after mailing them he destroyed the memorandum. It was a record of those companies' advances. The list had served its purpose. The little slip of paper is gone (Haid, II, 390-392). Mr. Haid assumes that the checks were mailed to Mr. Street either that same day or the following day (Haid, II, 378, 391-2). The checks were mailed in an envelope without any message to Mr. Street (Haid, II, 392).

Mr. Erskine never had anything to do with bringing in any of the checks that would make up the sum of money which Mr. Haid said Mr. Street had arranged to get in the meeting (Erskine, II, 349). Mr. Haid has thought this over many times and tried to refresh his recollection (Haid, II, 379). As he recalls, the checks were sent to his office by previous agreement with Mr. Street, and he asked witness to mail them to Chicago to him. As these men volunteered these various amounts, Mr. Street suggested that they send them over to witness' office and that witness would send them in one batch to him in Chicago. As witness recalls, some checks came in that day and they may have all come in that day. He does not recall whether some came in the next morning, but as soon as they came in they put them in an envelope and sent them to Mr. Street with no transmitting letter. He did not think a letter of transmittal was necessary; Street knew what they were and the amounts and what they were for and everything else (Haid, II, 390).

All Mr. Koop can remember of what Mr. Street said at the meeting was, "Gentlemen: You can draw your checks to Folonie, or to me, or to Folonie and me, just as you prefer." Some of the people present asked, "Well, how much do you want from us?" Street said, "I will let you know." That is all there was to it that Mr. Koop can recall. About that time everybody got up and was ready to go, and witness left (Koop, I, 396). So far as witness recalls, the meeting broke up, there were a few minutes visiting or something of that sort, and they all left, including Mr. Street (Haid, II, 391). Mr. Street made the statement that these checks could be made payable either to C. R. Street or to Hicks and Folonie or to R. J. Folonie. Witness definitely remembers his saying that (Haid, II, 388). Witness does not recall that Mr. Street said anything about making the check either to Hicks and Folonie or to Mr. Street. He did not say why he wanted the checks made to C. R. Street, chairman, but he did give that specific information. Nobody there asked why the checks were all to be made in that manner (Warner, III, 358-359).

Mr. Haid believes that the checks came to him by messenger. There may have been letters of transmittal to Mr. Street. Mr. Haid does not recall whether there were or not. If there were they were included with the checks and sent to Mr. Street. There is no reason that Mr. Haid knows of why the companies did not mail the checks directly to Mr. Street. All that Mr. Haid knows is that Mr. Street asked him to have the checks assembled in one spot and presumably put in one envelope. It did not occur to Mr. Haid to think about it one way or the other (Haid, II, 391). As the checks came in, Mr. Haid checked them off on the little slip of paper and the list was finished and he put the checks in the envelope and off they went. He kept no record or memorandum of the transmittal of the checks. There was no purpose in not making a record or in not sending a letter (Haid, II, 390). If someone had thereafter claimed that he had delivered a check to Mr. Haid, Mr. Haid would have no way of showing that he had received it or that he had sent it out. None of the checks were payable to Mr. Haid. The transaction would have been identical if the companies had mailed them to Mr. Street. Either Mr. Street would have received them or he would not have received them, and if the check got lost the only way to correct it would be to stop payment and issue another. Mr. Haid did not

have to clear anything across his books (Haid, II, 390-391).

GROUP ELEVEN.

(Note: Mr. Koeckert of this group was a member of the Subscribers Actuarial Committee. For evidence of his activity in and knowledge gained through that committee, see "III. Co-operative Activities. Subscribers Actuarial Committee".)

Mr. Koeckert ordered the check (Defendant's Exhibit 109, I, 501) issued (Koeckert, I, 499-500). This payment was entered on the issuing company's cash book, as of May 2, 1935, as follows: "N. L. Board, C. R. Street, Chairman, $7,500.00" (Defendant's Exhibit 111, I, 503). Mr. Koeckert read these words as follows: "National Local Board, C. R. Street, Chairman"; also as "National and Local Boards" (Koeckert, I, 503).

On the ledger the payment is entered as of May 2, in the account entitled "Nat'l. and Local Boards" as follows: "C. R. Street, Chairman—$7,500.00" (Defendant's Exhibit 112, I, 528). Mr. Koeckert contributed, but he thinks he never knew who fixed the amount that he would contribute until quite a while later. He rather sensed that this call, for whatever money might be expected of his organization, might come directly from Mr. Street or from Mr. Haid. Knowing that he would be out of the city at the time when the call might come, witness suggested to his associate, Mr. Monroe, that he give Mr. Haid or Mr. Street, if the call came from one or the other, the amount of money they were supposed to "assist on" in raising this fund. Mr. Koeckert did not know what their portion would be (Koeckert, I, 499). Mr. Koeckert did not know that his company's check was issued the same date as the meeting. If the check is dated the same date as that of the meeting, he is at a loss to explain. He may very readily have left that day, which probably accounts for Mr. Monroe signing the checks (Koeckert, I, 499-500). It is about right that Mr. Koeckert ordered the check issued the very day of the meeting. He did not know it would be issued for that amount before they issued it. Ordinarily a requisition is made for a check. There was just an office memorandum of this check, that it be charged to National Board Expense (Koeckert, I, 502). Apparently there was no requisition for this check. Mr. Koeckert would not have thought it

was necessary to do it (that is, make a requisition for this check). "It is usual, but in order to comply with our auditors' examination" (Koeckert, I, 502). There would not be anything so terribly upsetting with the auditor if witness did not do it. Perhaps it was unusual for it to happen in that way (Koeckert, I, 502). Mr. Koeckert does not remember that Mr. Street said to him how the check should be made. Witness thinks that he made it out, or that it was made out, with these instructions from Mr. Haid (Koeckert, I, 503). Generally when a check is issued an entry is made on the books in regard to it. The purposes of the check are not always set forth, in the records, but perhaps that is a general thing (Koeckert, I, 503). It was concluded by those who had to do with that check that, it was an "all right" place to put it on the books, under "National and Local Boards." It looks like the words, "National and Local Boards" are in a different handwriting from the "C. R. Street." Witness is not sure it is. He did not realize that. It should not be. The original entry was "C. R. Street, Chairman, $7,500.00." Witness will not say that "National and Local Board" was added later. It would seem that it is a different handwriting, but witness would not know about that. He thinks, from the looks, that it is a different handwriting (Koeckert, I, 503-504).

Witness supposes that "National and Local Boards" had not a thing to do with the remittance. It is put there because they did not know where else to put it for the moment. Witness understood it was legal fees, but it goes as part legal fees as it is. In the National Board quite a substantial percentage of the total money they pay goes to legal expenses. Witness knew that none of the money to "C. R. Street, Chairman," was going to the National and Local Boards, but he does not agree that this is a false entry, and he does not agree that it was put there for the purpose of attempting to make a record show that it was for the use or benefit of the National and Local Boards. It was put there because they did not have any other place to put it.

Witness had a feeling that some day they would get this money back, and now they are going to get it back. Witness felt there would be some kind of a redistribution coming from Mr. Street, and if they charged this account they could credit it when they got it back. Witness does not know whether Mr. Street told him so, but he had the feeling it might come back. Witness does not

recall that Mr. Street said if the compromise was not made it would come back (Koeckert, I, 504-505). The check to Mr. Street, Chairman, was for legal fees in regard to the Missouri rate proposed compromise. The National Board did not have a thing to do with the Missouri litigation, and the Local Board did not have a thing to do with it. The entry was made for the purpose of earmarking it. It had to go to some column in the expense outgo. Witness cannot tell why they put it in this column (Koeckert, I, 505). Probably there was no justification for putting it there. Subsequently it was put under "Attorneys' Fees." Witness was definitely not attempting to make a false explanation of the Street remittance.

"Q. That is what it does, doesn't it?

A. No, it doesn't do anything of the sort."

From what the attorney says it apparently does not belong to the account to which it is allocated. Witness did not direct the entry to be made. The accountant did. He probably got his information from witness. Witness told him just to put it in some item where they could identify it later, because he had a feeling they were going to get it back. He could have transferred it after he learned whether they got it back. They were paying it for legal fees.

"Q. Then why didn't you put it there? Why didn't you?

A. Well, we just didn't do it that way.

Q. Well, why?

A. Well, there is no answer * * * well, I say there is no answer. I can say this to you, subsequently we did put legal fees, as you will see. * * * That was under a little clearer understanding of what this was, that it was legal fees" (Koeckert, I, 505-506).

Witness thinks he got the clearer understanding, probably from Mr. Haid, who said: "Charge it to legal fees." Witness thinks that is probably where the first one should have gone (Koeckert, I, 506-507). When the "N & L Board" was put in there, witness did not put it in but the accountant did. The accountant knew nothing about it except what he found out from witness. Witness does not know that he knew the accountant was going to put it in that way. Witness just told him he would have to give him some kind of a name, because witness did not know what it was.

"Q. And you left that up to him to handle it any way he happened—

A. (Interrupting) That is about what happened."

Witness probably should have told the accountant what it was, but he did not, because at that time, he did not think it made a lot of difference.

"Q. Well, why didn't you tell him the fact?

A. I don't think I would sit down and tell him what I heard or what I discussed at a meeting.

Q. You mean you were keeping it secret from the accountant?

A. Yes.

Q. Then why didn't you tell—

A. Because it wouldn't have been my way to have done so.

Q. Don't you tell your accountants?

A. No.

Q. Not in a case of this kind, is that what you said?

A. Oh! no, no, no.

Q. Well, what would you say?

A. Oh, well, I didn't say.

Q. Why would you attempt to conceal it?

A. I don't think I tried to conceal it.

Q. You did conceal it, didn't you?

A. No, I wouldn't say that" (Koeckert, I, 508-509).

"Q. Didn't you say a moment ago that you wouldn't tell him?

A. Well, because it wouldn't be my way ordinarily to do it.

Q. Do you mean your way is to deceive your accountant?

A. There is no deception—that is not a deception.

Q. Why it caused a false entry to be made, didn't it?

A. No, I don't think so" (Koeckert, I, 509).

"Q. It didn't belong to this account?

A. Well, it was all right to put it there at the time.

Q. I know, but why didn't you put it to legal fees?

A. Well, I didn't do it.

Q. And you didn't want your accountant to know?

A. Well, I didn't know that I cared about that—whether he knew it or not.

Q. Yet you deliberately told him the wrong account? A. No, I didn't—I think he followed very much his own idea about it.

Q. That is you concealed from him the fact that it had been contributed to Mr. Street.

A. No, I don't think it is concealing.

Q. You don't call that concealing?

A. I wouldn't know."

Witness does not usually tell his accountant in a case of this kind. Witness did not wilfully fail to tell him. He never wilfully failed to tell the accountant anything (Koeckert, I, 509-510). It is probably so that at the time witness told the accountant this "N. and L. Account," witness knew that the money did not belong there; he would not say he knew it. He knew that Mr. Street had called for it for legal fees in connection with the Missouri Rate Litigation. He still does not think it is just right that he deliberately told the accountant something that he knew was not true.

(Note: The master at this time stated that witness' explanation had not been very clear; that witness was the only person who knew why he did it, and asked if he could not clear it up in his own way.)

The witness said he would make a good effort in that direction. His recollection of what happened is that Mr. Street told them that he had to have certain moneys, very strongly giving witness the impression that it was to be for certain legal expenses. Whether that involved attorneys' fees, witness rather senses that it did, but when the call came for the money, witness probably overlooked saying that it was to go definitely for legal expenses on the books. That is about the only way he can clear up what he was trying to tell. Witness had hoped to get this money back some day, and if he did, it did not make any difference for the moment whether he put it to National Board and Local Board expense or to legal fees. If he got it back it would be credited in the same fashion that it was debited, and in their case it did not make such a lot of difference where a thing goes as long as it is explained why they did it. This is hardly explainable (Koeckert, I, 510-511).

Witness does not now, and did not then, know how he expected to get it back, and he does not know that he had any right to expect that he would get back attorneys' fees. He does not think that he expected, if

he got the money back, that it would be attorneys' fees. He sort of got the impression that he might get it back, but does not know how. He would think he was paying it for legitimate attorneys' fees and he never got attorneys' fees back, and he supposed he had no right to expect it, but he expected to get some money back, though not any part of the lawyers' expenses. He thinks there was some intimation given to him that there might be a redistribution. He does not know and cannot remember what Mr. Street said, but he thinks the attorney was probably right, that Mr. Street did say it would come back if the compromise were not effected. He does not know that Mr. Street said it in just that language, and he does not know how he did say it, but he probably said it (Koeckert, I, 511-512). Witness was asked if he knew that these so-called attorneys' fees would come back to him if the compromise were not effected and he said, probably so. He does not have any recollection of what Mr. Street said about that point; that the attorney was probably right, he probably did leave the meeting with the definite impression that it was to come back to him (Koeckert, I, 512-513). He is sure he did, but he is not so sure that he knew it was not legal fees. He would believe anything Mr. Street told him (Koeckert, I, 513).

Mr. Street said he was going to use $100,000.00 to get certain preliminary expenses out of the way. Witness does not even recall whether he said he had incurred it, or if it had been incurred, but he said it was necessary to have that much money to get certain preliminary expenses out of the way, that had to be gotten away first. It came to witness' mind, why does he not use the trust money? Mr. Street gave him the impression that he could not use the trust money, but witness does not know why, and witness did not ask him why. He did not ask him anything. Witness would not have questioned Mr. Street. Witness was asked if Mr. Street mentioned that he could not use the trust money and he answered: "No—yes, I think he sorta touched on that. Yes, he did" (Koeckert, I, 515-516).

Attorney for defendants then stated that witness was talking about the meeting in New York in 1935, and witness said he knew which one he was talking about—the May meeting. Attorney for plaintiffs called attention to the fact that there was not any trust money then (Koeckert, I, 516).

Mr. Koeckert was asked whether as a member of the Actuarial Committee he ever "revealed" (referred to it) that Mr. Street had taken $7,500.00 of his money. He said he would not do a thing of that kind to Mr. Street because of his regard. There was nothing secret, but to him Mr. Street was the last word of responsibility and integrity. Witness would very definitely have felt that he was going behind Mr. Street's back if he had reported to the committee of which he was a member, and which ostensibly had charge of the litigation, that Mr. Street had made an assessment on these companies, and he would have also felt that if anything like that was to be said to Mr. Street, those perhaps a little closer to him in Chicago would have done whatever was necessary. Witness would not have thought anything was necessary. Witness did not feel that he was under an obligation not to reveal to the Actuarial Committee that Mr. Street had collected this money from these companies, distinctly not; he had no such feeling, but he knows he would not report it because he trusted Mr. Street so definitely (Koeckert, I, 517).

GROUP TWELVE.

(Note: Mr. Henne of this group was a member of the Subscribers Actuarial Committee. For evidence of his activity in and knowledge gained through that committee, see "III. Co-operative Activities. Subscribers Actuarial Committee.")

A.

At the Home Office.

Mr. Culver left the meeting, immediately walked back to his office, and had the check (Defendant's Exhibit 5, I, 46) prepared (Culver, III, 402-403). He directed the payment to be made and gave the direction that it was "Charles R. Street, Chairman" (Emes, II, 336). Mr. Culver thinks that Mr. Emes was in his office when he told Mr. Emes to prepare this check. He went to Mr. Emes's office or Mr. Emes came to him (Culver, III, 402). Mr. Culver called Mr. Emes into Mr. Culver's room and asked Mr. Emes to have the $15,000.00 check drawn as per the memorandum (Defendant's Exhibit 198, II, 307); Mr. Culver simply told Mr. Emes that Mr. Culver had a telephone call or visit from Mr. Haid, and had been

requested to have a check made to the order of Charles R. Street, Agent, for $15,000.00. That is all Mr. Culver said (Emes, II, 326).

Mr. Emes knew the check was in connection with the Missouri case (Emes, II, 326). He did not know that on the day the check was issued, Mr. Culver had attended a meeting at the office of the Insurance Executives Association (Emes, II, 336). Mr. Emes did not try to get the knowledge or information from Mr. Culver that Mr. Emes would have to depend upon to determine the proper charge. Mr. Culver stated at the time that it was made to Charles R. Street, and the minute Mr. Street's name was mentioned Mr. Emes knew it was in connection with the Missouri case (Emes, II, 328). Mr. Culver instructed Mr. Emes, the then auditor, now the comptroller, to issue such a check, which Mr. Emes did. Mr. Haid's office is about two blocks from Mr. Culver's companies' office, and Mr. Culver either delivered the check by hand or sent it over to Mr. Haid (Culver, III, 402). Mr. Culver did not tell Mr. Henne how many companies contributed to the $100,000.00 and at the time of this conversation Mr. Henne was not familiar with the terms and did not know that it was being signed up (Henne, I, 49). Mr. Culver does not know why he did not take the check back to Mr. Street. It is his recollection that he took the check back to Mr. Haid's office at the latter's suggestion that Mr. Haid would collect the checks and deliver them to Mr. Street. No transmittal letter was sent with the check (Culver, III, 403). Mr. Culver did not see Mr. Street after the Hartford meeting, if there was a Hartford meeting (Culver, III, 405).

Mr. Emes does not recall that he handled anything else in connection with the Missouri rate litigation. So far as he knows, this was the first time his office had made any disbursement in connection with the Missouri rate litigation. The compromise was not effected, and they had not received any money from it; so it was out of the ordinary routine for this item to be handled and this disbursement made out of "this" office (Emes, II, 326-327). In 1935 they had not received the remainder from the West or anywhere else (Emes, II, 333).

The cashier drew the check for $15,000.00 on May 2, 1935 (Moeckel, II, 306). Mr. Erskine has no recollection of getting this check (Erskine, II, 349). Mr. Moeckel drew no checks in connection with the matter

other than those given for 5 per cent of the impounded premiums (Moeckel, II, 305). Mr. Moeckel got the information in regard to writing the $15,000.00 check on May 2, 1935, from Mr. Emes, the comptroller. He got the information it was for legal expenses. That is the extent of the information he got. He had no other information about the matter, and he simply caused it to be written and delivered to Mr. Emes. He had no talk with Mr. Haid, Mr. Erskine or Mr. Street about the matter (Moeckel, II, 306). At the time the check was written Mr. Emes did not tell Mr. Moeckel who was requesting the check. Mr. Moeckel knew it was payable to Mr. Street (Moeckel, II, 309). Mr. Moeckel is not familiar with the details of the compromise. He was only instrumental in drawing the check orders in question. He was in New York at the time (Moeckel, II, 305).

Defendant's Exhibit 326 (III, 404) is a requisition of the Continental Insurance Company dated May 2, 1935, for a check to the order of Charles R. Street, Chairman, for $15,000.00 in payment of legal expenses, Missouri rate case, with a notation "Charge legal exp." Mr. Culver would say that this requisition was written in the cashier's department, but he is not positive (Culver, III, 403-404).

Mr. Culver did not prepare Defendant's Exhibit 198 (II, 307); that memorandum was prepared by Mr. Moeckel (Culver, III, 406). Mr. Culver did not write any memorandum as to the transmission of the check. He gave Mr. Emes instructions as to a memorandum that might be prepared (Culver, III, 403). Mr. Moeckel explained that Defendant's Exhibit 198 is, in fact, two memoranda: One given him by Mr. Emes and the other written by himself (Moeckel, II, 308).

The first part of that Exhibit (II, 307) is as follows:

"Memo from Mr. Moeckel.
Chas. R. Street, Chairman
" $15,000.00 Mo. Legal Expense
Pd. May 2, 1935
Mr. Culver says bring up Aug. 1st Sept. 1
6/15/35"

The above is the part of the memorandum given by Mr. Emes to Mr. Moeckel (Moeckel, II, 308). The words "Mr. Culver says bring up Sept. 1" are in Mr. Moeckel's

writing. It is not Mr. Emes's writing (Emes, II, 330; Moeckel, II, 308). The words "Charles R. Street, Chairman, $15,000 Mo. Legal Expense" are in Mr. Emes's handwriting (Emes, II, 336). The balance of Defendant's Exhibit 198 is as follows:

"12/18/35

The 15,000 advanced to Mr. Street for legal expenses will eventually be returned to us, but not before the end of the year. Mr. Culver did not want the West. Dept. billed for this item and in order to handle it over the end of the year Mr. Culver had Mr. Henne forward Missouri prems. for a basis of apportionment. It has been decided to let the charge rest with the Cont'l & F. P. on a 50/50 basis to be charged to General Expense."

On May 2, 1935, a disbursement of $15,000.00, properly chargeable to the Chicago office, was made out of the New York office. Mr. Moeckel's only information and knowledge is that the request for this check came to him through Mr. Emes from Mr. Culver (Moeckel, II, 309). Except for getting all the business into one final annual statement, all of the bookkeeping transactions for the Missouri business are, in fact, kept in Chicago (Emes, II, 341). This business all happened in the Western department. The Western department is, for underwriting purposes, run separately from the office, and it keeps its records concerning the premiums and things of that kind (Moeckel, II, 312). They allocate all such expenses to the department producing the cost (Moeckel, II, 308). The Western department was closer to the Missouri litigation than the home office was. Missouri was in the Western department, and it was their premiums that were involved (Emes, II, 328). They knew more about the premium situation than the home office did. Witness understood that it was being managed by Mr. Street in Chicago (Emes, III, 328-329). The figures to make the proper allocation are in the Western department. "They were not here" (in New York). If they held it here, that would require them to send out to Chicago to get figures in order to make an allocation; whereas, if you charged it to them, it could have been attended to without getting those figures (Emes, II, 332). The check would eventually reach the Western department for a charge. Mr. Emes would not say that it

would ordinarily be handled by the Western department (Emes, II, 326). He does not think that department would know more about it than he would (Emes, II, 328).

"Q. Isn't the Western department, after all, a mere convenient designation of the business in Chicago which at last has to be carried on the home office books in New York?

A. Yes, and further than that, the Western department handled the State of Missouri, and they make the particular office split of expenses applicable to various states in those various branch offices.

Q. That is right. It starts there and not here.

A. Yes, and ends there, but if the procedure is reversed, in many instances we have a business at the home office, like through the pooling arrangements, that is shifted by us to the branch office" (Emes, II, 341).

In the home office, in the ordinary course of routine business, where you have all of the supporting documents, final accounting is from Mr. Moeckel (Emes, II, 336). It is the practice of this company to allocate those charges to the office producing the expense. Mr. Moeckel means that it would be returned to them from the Chicago office. That was his understanding of the memorandum (Moeckel, II, 311).

At the time Mr. Moeckel wrote his memorandum, Mr. Emes told Mr. Moeckel that that would be charged for legal expenses and the money would be returned eventually from the Western department (Moeckel, II, 308).

When Mr. Moeckel said "will eventually be returned to us" he meant returned from the Chicago office (Moeckel, II, 311). Mr. Moeckel got the information that

> "the $15,000.00 advanced to Mr. Street for legal expenses will eventually be returned to us, but not before the end of the year"

from Mr. Emes (Moeckel, II, 311). The memorandum means that Mr. Emes turned this over to Mr. Moeckel to bring the matter up to Mr. Culver on September 1. At the time Mr. Moeckel got it, that was the only writing he made. Mr. Emes talked with Mr. Moeckel and he made his first memorandum "6-15-35." The idea was that they were to get the money back from the Chicago office and Mr. Moeckel was to bring it up at that time if they had

not gotten it back by then, and to inquire when they would get it back (Moeckel, II, 308). The term "general expense" in the memorandum means that it is an expense that could not be allocated to any particular department, and it was allocated against the company as a whole (Moeckel, II, 314). The charge has always rested as legal expense. When Mr. Moeckel says "to be charged to general expense," that just means a classification as between a department expense and a company-wide expense, just like you would make "Missouri expense" or "home office expense" (Moeckel, II, 314). They charged it to an item called "general expense," Mr. Emes believes, at the end of the year (Emes, II, 338). That was not an allocation at all, just a makeshift. It was a temporary entry until they finally removed it (Emes, II, 338). The memorandum was written on December 18, but Mr. Moeckel might have gotten that information any time between May, or whenever that check was first drawn, and that date (Moeckel, II, 311).

Mr. Culver did not want the Western department billed for this item (Moeckel, II, 311). Mr. Moeckel never learned before December 18, 1935, why Mr. Culver did not want the Western department billed for this item (Moeckel, II, 311).

It should have been billed (Moeckel, II, 310). Mr. Moeckel did not bill his Chicago office for it at the time the check was written because Mr. Culver requested him not to, just saying that he did not want it billed at that time. Mr. Moeckel has no idea why; it may have been because, as an advance payment, it was not complete, and they did not have the complete information to make the allocation among all of the companies, since the memorandum states that they are to get the information from Mr. Henne upon which to base the apportionment among the companies (Moeckel, II, 308-309).

Mr. Emes does not deny that he informed Mr. Moeckel not to bill the Western department because Mr. Culver did not want it done (Emes, II, 331), but Mr. Culver said nothing to Mr. Emes about charging the Western department. It would not be necessary. It would be Mr. Emes's function to finally decide that (Emes, II, 327). Mr. Culver knows nothing about bookkeeping entries (Emes, II, 328).

On May 2, 1935, when they made the advancement, Mr. Emes could not allocate it (Emes, II, 334). As to

the statement in the memorandum that Mr. Culver did not want the Western department billed for this item, Mr. Emes does not know the meaning of that. It means nothing to his mind. They could not apportion it among their companies, because they did not have sufficient information, and Mr. Emes does not believe they could have apportioned it at the end of the year. Mr. Emes does not know of any particular reason why they did not want to bill the Western department. It was not of enough importance to bill them then or at any other time (Emes, II, 331).

There are six companies, and eventually it would probably be apportioned on a premium basis; at the time, nobody knew what premium basis (Emes, II, 328). It was paid by the Continental for the benefit of six companies (Emes, II, 327). The Continental pays all the expenses that may become a joint account, that is, rent, things of that kind. It is a clearing house for group expenses, and at the end of the month the Continental is reimbursed for its outlay (Culver, III, 406). There was some indecision on Mr. Emes's part as to how to charge it, because it was, you might call it, an even amount. They knew no way in which to allocate it (Emes, II, 327). Mr. Moeckel's recollection is that the New York office did not have the basis to make the apportionment upon the proportion of premiums (Moeckel, II, 309). Mr. Emes knew the premium basis of the six companies for prior years, but under the contract it would have been allocated on the current year's premium income, which would have been determined at the end of the year 1935. If the $15,000.00 that Mr. Culver directed to be paid to Mr. Street for legal expenses was to be allocated to the companies according to the contract, you could not possibly do it until after December 31, 1935, unless they made a forced allocation; so that there was nothing unusual in holding it over until December 31, 1935. It was automatic because the Continental had paid it and would have followed out at the end of the year (Emes, II, 337-338). They did not know how many premiums were impounded by the different companies (Moeckel, II, 312). Mr. Emes assumed it would apply to all six of their companies. So they had the Continental pay the sum and it was carried in suspense until such time as they were able to allocate it (Emes, II, 327).

Exhibit 198 is not entirely in accordance with the facts. Mr. Moeckel makes the statement that Mr. Culver did not want that item reported to the Chicago office. That is not quite correct (Culver, III, 406). Mr. Culver does not think it is correct that he told Mr. Moeckel or Mr. Emes not to notify the Western office anything about the $15,000.00. He thinks Mr. Moeckel got that impression, but it is not true; because, as a matter of fact, Mr. Culver thinks that the next time that Mr. Henne came to New York, which is usually once a month, Mr. Culver told Mr. Henne about it. There was no reason why the Western department should not know about it. That is why Mr. Culver says that Mr. Moeckel's statement that Mr. Culver told Mr. Moeckel not to notify the Western department is not quite in accordance with the facts. Mr. Culver told Mr. Moeckel that he did not want to send that item out there until they got it all cleaned up, which is exactly what was done (Culver, III, 408).

This $15,000.00 check had two elements. The first one was that it was an arbitrary amount and apparently would have no bearing on what they would eventually be called on to pay for those expenses. In the second place, when they knew what the actual expenses would be they would put that through the clearing house to all of the companies, prorated as to every company in the group according to the volume of premiums in Missouri (Culver, III, 406).

There was no particular purpose in transferring that suspense item of $15,000.00 to Chicago and have it hung up there to go through the same process. What Mr. Culver intended to convey to Mr. Moeckel was that they would simply leave that in suspense until these two factors were determined as to how much of the $15,000.00 they would eventually be called upon to pay and on what basis each company would be called upon to participate (Culver, III, 406).

Mr. Moeckel, being a good accountant, wanted to get that off his suspense book; so he came to Mr. Culver two or three times and wanted to know if that could be done. Mr. Culver told him "No"—that he had had no word from Mr. Street. It was exactly the same as when the check was issued on May 2 (Culver, III, 406-407).

Mr. Emes may have talked to Mr. Culver about it in June, 1935. He does not recall. If he did talk to him, it was a suspense item on the Eastern department books, and witness may have asked Mr. Culver if they could get

it cleaned up. Witness does not believe that on June 15, 1935, anything had been done about charging or getting that money back from the Western department (Emes, II, 330). When it was brought up again on June 15, 1935, according to the memorandum, Mr. Culver said bring it up to September 1; so Mr. Emes could not do anything with it then. It was of some importance that Mr. Moeckel wanted to try to clear his books. That is the importance of it. Witness does not know what was done by Mr. Moeckel about bringing it up in September, 1935. He was probably told to let it go for a while longer (Emes, II, 334-335). Mr. Emes told Mr. Moeckel that Mr. Culver said "bring up September 1"; that is, bring it up to Mr. Culver (Moeckel, II, 308).

On June 15, 1935, Mr. Moeckel probably spoke to Mr. Culver or Mr. Emes about getting the money back from Chicago, and he said "Bring it up September 1st." At that time Mr. Moeckel had not billed the Chicago office because he had instructions from Mr. Culver not to bill it. Mr. Moeckel did not then ask if he should bill them (Moeckel, II, 309-310). Mr. Moeckel got no satisfaction from Mr. Culver. Mr. Culver said to bring it up September 1st. Mr. Moeckel did not ask Mr. Culver why it should not be billed in ordinary course, and Mr. Culver did not tell Mr. Moeckel (Moeckel, II, 310). When Mr. Culver said to hold it until September 1, he was hoping that at that time he would get word how the $15,000.00 was to be dealt with. He thinks that one of them called it to his attention again on September 1, and he told them to hold it, but does not know whether he said a specific date (Culver, III, 408-409). It was laid over until September 1, and nothing was done to get it back (Emes, II, 330). Mr. Moeckel had not billed it (Moeckel, II, 310, 312).

Mr. Moeckel believes that he brought it up before Mr. Culver on September 1 (Moeckel, II, 308).

Then Mr. Moeckel brought it up on September 1st, either with Mr. Culver or Mr. Emes (Moeckel, II, 310). He believes he brought it up then before Mr. Culver (Moeckel, II, 308). He just asked, perhaps, if they could get the money back this particular year. He cannot recall what they said. Mr. Moeckel's knowledge is that he just brought it up on September 1st to find out if it was to be billed to the Chicago office, and the information he got was that it was not to be billed, no reason being given why it should not be billed. It was a mystery to

Mr. Moeckel. He did not understand it. It was an item up in the air. He thought it would probably be billed eventually. It was not giving him any concern. He does not recall that Mr. Culver told him to bring it to his attention again at a later date, nor that Mr. Moeckel brought it to Mr. Culver's attention again before December 18, 1935, when he made his second memorandum (Moeckel, II, 310-11).

Mr. Moeckel talked to Mr. Emes on December 18, 1935, and Mr. Emes then made the remark that Mr. Culver did not want the Western department billed for this item. Mr. Emes does not recall whether Mr. Culver told him that, but probably not. He thinks not. He told Mr. Moeckel that, because it was in line with a previous conversation, to wait until they could get some proper figures to split the thing on. Mr. Emes wanted to hold the figures over until the end of the year, because there was no way of telling any proper figures in the year 1935. If he had billed the Western department they would have advanced the home office $15,000.00, and would have had an open item on their books which they could not allocate any more than the home office could (Emes, II, 335).

In order to handle it properly over the end of the year Mr. Culver had Mr. Henne "furnish Missouri premiums" for a basis of apportionment. Mr. Moeckel got that information from Mr. Emes. "Furnish Missouri premiums for a basis of apportionment" would mean that Missouri impounded premiums would have been furnished for the allocation among the companies involved for their proportion of the charge (Moeckel, II, 312).

This payment was made in the home office. They therefore made a request on the Western department to furnish a statement of how many impounded premiums each one of the companies had; so that they could use that basis to apportion this payment, the payment to be charged against the various companies in proportion to the amount of premiums that they had impounded in Missouri (Moeckel, II, 312-313). Mr. Moeckel did not advise the Western department of the purpose for which Mr. Henne was required to furnish the Missouri premiums. Mr. Moeckel does not know whether Mr. Henne was advised as to the purpose for which he furnished the information or not (Moeckel, II, 313).

Mr. Emes did not bill the Western department. There was no need or necessity for it (Emes, II, 331). Mr. Emes did not write the Western department for imme-

diate information, because that department would have had no knowledge, and there would have been no reason to write them. At that time Mr. Emes decided not to bill the Western department. Mr. Culver knew no more about it than the telephone call asking that he advance the money, and Mr. Culver knows nothing about the allocation of figures in their office (Emes, II, 327). So far as Mr. Moeckel knows, the Western department had not been given any information whatever on December 18, 1935, or before, that this expenditure had been made (Moeckel, II, 311). Mr. Moeckel's own personal knowledge is that the Western department was never advised. He never advised them, but maybe they were advised. He never undertook to ascertain (Moeckel, II, 314). Mr. Moeckel was not necessarily the man that would have passed the information on to the Western department. Mr. Emes might have done it or Mr. Moeckel would. He would have passed it on if he was told to. He would have billed the Chicago office if he had been instructed to (Moeckel, II, 312).

The premiums of all the companies did not come through. It says in the memorandum "Mr. Culver had Mr. Henne furnish," but nevertheless the premiums did not come through. Mr. Moeckel never got them. He does not recall whether Mr. Emes knew at the time that Mr. Moeckel had never gotten them (Moeckel, II, 313). They evidently did not come through (Moeckel, II, 313). That is why they let the charge rest 50-50 with the Continental and Fidelity-Phenix until the end of the year. Later on, at the end of the year, they split that amount until they were able to allocate it, but at that time they had absolutely no knowledge or idea how to split it (Emes, II, 327-328). As Mr. Emes recalls, they split the $15,000.00 between two companies until they could get some allocation (Emes, II, 333). The item was allocated and split as of the year's premiums (Emes, II, 338). It was allocated before the end of 1935, only between the Continental and Phenix at 50-50 (Culver, III, 409). The decision to let the charge rest with the Continental and the Fidelity-Phenix on a 50-50 basis was probably Mr. Emes' thought and Mr. Moeckel's also (Moeckel, II, 313). They could have allocated it against the Western department, he supposes, but it was just decided to "rest" it 50-50 (Moeckel, II, 314).

It is not Mr. Moeckel's best judgment and he would not say that the charge was allowed to rest 50-50 against

the two companies because they did not want the Western department to know that the payment had been made at that time. He does not know that it was kept from the Western department (Moeckel, II, 314).

The Continental and the Fidelity-Phenix are the two bigger, approximately the same size so far as Missouri-written premiums were concerned. Those two had the overwhelming majority of all the premiums in the group (Moeckel, II, 313). The other companies in the group are owned one-half by the Continental and one-half by the Phenix outside of a few qualifying shares (Culver, III, 408). The Continental and Fidelity-Phenix owned the other four companies 50-50 (Emes, II, 327). The Continental and the Fidelity-Phenix are independently owned companies represented by 12,000 to 15,000 stockholders on each side. One might own stock in both, but there was no identity of ownership. It would not be fair to have that check go over the annual statement time at the end of the year and be charged entirely to Continental, because it would throw their expenses that much out of balance. So, not being able to get an absolute allocation, Mr. Culver told Mr. Moeckel to throw that to the Continental and Fidelity-Phenix fifty-fifty. Usually on a thing of that kind they go about 45 Phenix and 55 Continental, but there was not enough difference; so Mr. Culver told him to throw it 50 per cent each way. On the Missouri premiums there was very little difference. The Phenix had a little bit more in premiums on account of their farm business (Culver, III, 407).

Mr. Culver did not apportion the $15,000.00 against the impoundings on all members of the group for the reason that $15,000.00 was not the amount they would probably be called upon to pay. He did not know anything about any additional amount at that time. If he had allocated that at that time against their impounded premiums, the proportion would have been about $8,000.00 instead of $15,000.00. Mr. Street did not take in all of the little companies but only a few companies that represented approximately one-half of all the outstanding premiums. It necessarily followed that if Mr. Culver had put it in proportion, which he did not take the trouble to do, they would have all put approximately twice as much into the pot as they would finally have to do. Mr. Culver did not take the trouble to make an allocation without any figures as between the various companies belonging to one group which, in fact, rep-

resented a common ownership. But as between two companies where there was no common ownership, each being the leader of a group, he split it 50-50 (Culver, III, 407-408).

Witness held up charging the Western department because he did not know it should be allocated by companies, percentagewise (Emes, II, 328). The witness was asked what there was about the fact that they did not know how to allocate it that made him hold it up. He answered that the Western department would have returned it to them in due course, or paid the original, he supposes, if they had been asked. He does not know, but since the home office advanced it, they would eventually have to get it back from the Western department in order to get the proper allocation against the state that incurred that expense. Until such time as they got final premium determination, they split it in the one year between the two companies, but eventually got that $15,000.00 plus whatever the remainder was. Witness does not know whether the home office asked the Western department to reimburse them before they ever found out what the allocation was (Emes, II, 329-330).

Mr. Emes does not know whether the books were clear. He does not recall whether it was paid back or not (Emes, II, 331).

"Q. I still don't understand what it was that made you hold it up and not bill the Western department.

A. No particular reason, simply held in suspense. No reason at all, simply didn't get to do it."

Witness said there was no particular hurry to get it from the Western department so long as they had cleaned if off their books (Emes, II, 330). Witness knew that they they were not going to get it cleared up before the end of the year without further investigation unless he billed the Western department (Emes, II, 331).

"Q. The end of the year was coming?

A. That was to clear our books at the end of the year" (Emes, II, 331).

There is no specific purpose in Mr. Emes's mind at all why he wanted to hold it over beyond the end of the year. He does not recall "those conversations" at all (Emes, II, 335-336). They refrained from billing the Western department during the year 1935 because billing in that year would simply have removed the suspense item from their books and given them no final

figure that they could allocate, since they had no basis to allocate on until 1936 or some later year. They got that basis when they got the final 5 per cent figure; the $15,000.00 plus the other $22,000.00 was spread across the board among the companies (Emes, II, 334).

"Q. You didn't know you were going to get that when you did that. That came out of a settlement. There had been no settlement made at the time you paid the $15,000.00?

A. That is right, and to be fair and just to the companies we split it on a 50-50 basis charging the two parent companies $7,500.00 in the year 1935.

Q. So far as you knew at that time you would never get that money back?

A. No, I really didn't know anything about getting any money back.

Q. All we are trying to find out from you is why affirmative action was taken not to charge that to the Western department in that year.

A. Well, I can only say again, the fact that it was of no importance at this time or that time, it meant nothing whether we charged the Western department or not, because eventually it would come to the home office and we could make a proper charge. You remember we handle the annual statement in the home office. We make the split among the items in the home office. I am trying to make it clear. There was absolutely no thought or knowledge in my mind of any reason for not putting it on the books at that time except it would probably make it easier to hold it over" (Emes, II, 334).

"Q. Was there any reason that you know of, other than mere convenience of accounting, for holding the $15,000.00 in suspense over December 31, 1935, until the Missouri rate litigation was apparently cleaned up by the compromise and the receipts in, most of the receipts in, and expenses paid?

A. There was no reason at all.

Q. * * * If there was some other reason maybe Mr. Culver knows, but it was not a bookkeeping reason?

A. No, I really think Mr. Barnett, it is hard, but we simply let that thing drift * * * I was just thinking for a minute, if we transferred that to the Western department, we would have probably had them with an open suspense item on their books the same as we did.

Q. That is what you finally did?

A. We got it out of our books" (Emes, II, 341).

It was of no immediate importance whether they cleaned that thing up in June, July, or December.

Mr. Emes's attention was called to the fact that affirmative action was taken to keep it from being done, and he then said he knew of no particular reason, unless not to upset the books. There was no reason why it should not have been done, or postponed.

"Q. The books were upset by its not being done, weren't they?

A. The books were upset to the extent that we had an open suspense on the Eastern department books that we eventually wanted to get off.

Q. Well, according to the other witness (Mr. Moeckel) though, he would have straightened that matter out forthwith, except that he got instructions from you not to do so.

A. That may be true. I don't recall any particular reason for saying it or giving it. As I say, there was nothing important in my mind at that time or this time" (Emes, II, 332).

"Q. Why did you want to make the allocation at all? The Western department was the proper place to make the allocation. It was a proper charge and they had the figures.

A. Yes, but the Western department is only a subsidiary. It finally comes to the home office.

Q. Only in monthly reports.

A. But they go in into the final figures" (Emes, II, 333).

Mr. Emes is trying to make clear that this $15,000.00 had no particular importance, except they had a suspense item on their books and would have liked to have had it cleaned off. Whether they cleaned it off or not made no particular difference.

"Q. But the evidence is that affirmative action was made to keep from cleaning it off. That is what he has asked you about. Do you remember anything about that?

A. No, I don't" (Emes, II, 333).

B.

At the Chicago Office.

The manager of the Western department (Mr. Henne) does not recall that he had been debited for his proportionate part of the $15,000.00 prior to April 16, 1936 (Henne, I, 48). At the time this check was issued Mr. Henne had no knowledge of it. He first learned that the check was issued at least weeks, if not months, afterward. He thinks Mr. Culver told him about it. He thinks the check was payable to Mr. Street. He knows only what Mr. Culver told him about it (Henne, I, 44).

Mr. Henne received information from Mr. Culver that $100,000.00 was raised at the time the $15,000.00 check was given. Mr. Culver did not say how it was raised, other than by contributions of several companies, but witness does not recall that he identified them (Henne, I, 48-49). Mr. Henne was not told at that time by Mr. Culver that if this money were not used it would be returned if the settlement did not go through, and he did not ask Mr. Culver and does not recall that he received information to that effect afterwards. The only advices he had from Mr. Culver were subsequently by the letter when he called for reimbursement (Henne, I, 47-48).

Mr. Henne first learned of the issuance of the check after it was issued on one of his periodical visits to the New York office. Mr. Culver told him that this payment was made to Mr. Street for legal expenses (Henne, I, 47).

Mr. Henne was not told at that time how his company happened to be called upon to advance $15,000.00 for legal expenses directly to Mr. Street as chairman, and he made no inquiry. A part of that was charged back to his department "here," and entered on his books as legal expenses. He did not know what legal expenses it was supposed to pay. He knew it was in connection with the Missouri rate litigation (Henne, I, 47). Even as a member of the Actuarial Committee, Mr. Henne would not question this disbursement made by his New York office (Henne, I, 64). Mr. Henne's company subsequently received advices to reimburse the New York office for a specified amount of money that was advanced to Mr. Street for legal expenses (Henne, I, 26).

Defendant's Exhibit 6 (I, 51) is a letter dated April 16, 1936, from the president to Mr. Henne, stating that the question of providing money to cover legal expenses in the Missouri rate case had had some consideration, and that payment (hereinafter mentioned) was made, "in addition to the fifteen thousand already paid some time ago." The letter suggests that Mr. Henne send a check for the two amounts and states that Mr. Culver assumes that Mr. Henne will charge the item to legal expense in connection with the Missouri case, but leaves that part of the transaction to Mr. Henne's best judgment.

When Mr. Henne got this letter he knew of the payment out of the New York office chargeable to legal expenses (Henne, I, 58).

GROUP TWENTY.

(Note: Mr. Street was vice-president of the companies in this group and Western manager for all of them except the Detroit Fire and Marine Insurance Company. See "I. Witnesses.")

The check written for this group was signed by C. R. Street (Defendant's Exhibit 84, I, 399-400). The requisition for the check (Defendant's Exhibit 82, I, 398) is dated 5-9-35, is on the Great American Insurance Company for a check payable to "R. J. Folonie, Atty., in payment of advance on Missouri Attorneys' fees," is charged to "suspense" and is marked "approved" over the signature "C. R. S."

Mr. Street told the president of his own company that a meeting was to be held at which he would explain in detail his need for approximately $100,000.00 for legal fees (Koop, II, 395-396).

In May, 1935, Mr. Street came to the president's office in New York and told him that the case in the federal court was progressing very satisfactorily; that the report of the master was favorable to the companies and that he had every expectation that the decision in the federal court would be favorable to the insurance companies' interests; but that he feared that the attorneys for the state would try to obstruct or delay the distribution of the funds if the award were in favor of the companies, and he thought there was a reasonable chance of a compromise which would enable the distribution of the fund without a lot of legal proceedings; that he required

approximately $100,000.00 for legal fees. This statement was just to the president personally. He told Mr. Koop (the president) (which Mr. Koop has since learned was incorrect) that he had been to Hartford the day before and had collected approximately $50,000.00 from the Hartford companies, and that he wanted a like sum from the New York companies; that a meeting was to be held when he would explain it in detail (Koop, I, 395-396).

Mr. Street was with the president of his companies in the forenoon of May 2nd. Mr. Koop would not say that he talked to Mr. Street at length that morning. Mr. Street came in and told Mr. Koop the purpose for which he was there, and he may have been there for fifteen or twenty minutes. Mr. Koop did not know what legal expense it was, and Mr. Street did not name the legal expense or to whom it was to be paid (Koop, I, 397). He named no emergency, why legal expenses were required right then. Mr. Koop does not know who the lawyers representing these companies at the time were. He knows that Hicks and Folonie were, but does not know the names of the others (Koop, I, 397). Mr. Koop does not think Mr. Street mentioned that these companies' share of the $100,000.00 would be $10,000.00. He said: "We are going to make our contribution," but as Mr. Koop recalls, he did not fix the amount. Mr. Koop thinks that the first knowledge he had of the actual amount was when he saw photostatic copies of the checks in the early part of this year. He left it to Mr. Street to fix the amount of the contribution. It was within his authority (Koop, I, 413-414). Mr. Street did not give Mr. Koop the understanding that the $100,000.00 was not to be used unless the settlement was effected (Koop, I, 405).

When witness paid the $10,000.00, he did not make or keep or put in his files any memorandum of his conversation with Mr. Street (Koop, I, 405).

It was understood when the $10,000.00 was paid that the companies that made the advances would be credited when the final distribution was made (Koop, I, 405). There was no record by the board of directors that the president authorized Mr. Street to go out and contribute to a fund of $100,000.00. That was in the regular course of business. It was an underwriting proposition and the board does not attempt to handle that sort of thing. The president did not authorize Street. It was within Mr. Street's authority (Koop, I, 414). Mr. Koop thinks that

he did not mention Mr. Street's visit or the object of it to any of the other officers of his companies. He made inquiry later on, and Street did not discuss it with any of them. Mr. Koop thinks the entire discussion was with him. His board of directors met almost immediately, but, emphatically, neither Mr. Street nor Mr. Koop reported "all of this" to the board of directors (Koop, I, 414). Neither witness nor his board of directors gave Mr. Street any express authority to represent this group of companies in any manner differently than the way he was assuming to represent all of the other companies. The directors never knew anything about the situation. This is a matter of underwriting management (Koop, I, 420).

The contribution of these companies to that $100,000.00 was paid through the Chicago office under Mr. Street's instructions on a voucher reading about as follows:

"For attorneys' fees in connection with Missouri Litigation" and was drawn to the order of Mr. Folonie, Attorney (Koop, I, 397). Mr. Koop (the president) did not authorize the $10,000.00. Mr. Street at one time was the outstanding man in the fire insurance circles in Chicago. He was brought East as the president of the Fidelity-Phenix Insurance Company. He got into a row with the chairman of the board of that company, possibly along about 1926, and resigned. The affairs in the Western department of the Great American group were not running very smoothly then, and the then head of the Great American group, C. G. Smith, knowing Mr. Street intimately, asked him to join their organization (Koop, I, 405-406). When he was asked to come to them, it was at a salary less than one-half the amount that he was getting with the Fidelity-Phenix, but he had a contingent interest in profits. He feared that if the home office interfered with the conduct of the Western department, it might impair his ability to make his contingent profit, and he agreed to come with them only after Mr. Smith had agreed that there would be no interference from the home office; that Mr. Street was to be the sole judge of what was to go on in the Western field, except as to investments and indemnity insurance. Mr. Street did not know anything about the latter—just fire, windstorm and allied things; but in all other respects Mr. Street was absolutely dominant (Koop, I, 406).

After Mr. Koop became president, he had a complaint about a loss adjustment in the Western field, addressed to the president, without specifically naming him. Mr. Koop dictated a letter to Mr. Street and said, "We have a letter of a certain type," giving him a copy of it, and asked for an explanation. Mr. Smith, then chairman of the board, happened to look at this letter lying on the president's desk, and he said:

> "Oh, no, no, no, Koop, you can't send that letter. All you can do is acknowledge receipt of it, and say it has been referred to Mr. Street. Street is in complete charge of our Western department."

Mr. Koop so regarded Mr. Street in 1935 and up to the time of his death (Koop, I, 406-407).

The president never, at any time, told Mr. Street what he could or should do in connection with the Missouri litigation. That was in his territory, under his jurisdiction. He was the management in the eighteen states comprising the western territory and was absolutely the highest officer in the company (Koop, I, 420). The president was absolutely willing just to leave the entire Missouri rate litigation to Street to handle as he pleased. The president never paid any attention to it whatsoever. The companies had the advice of his Actuarial Committee and his attorneys out there (Koop, I, 407).

GROUP TWENTY-THREE.

The advance was entered on the journal as

> "Legal. Charles R. Street, Chairman Mo. Refund Case.....$15,000.00" (Defendant's Exhibit 99, I, 448).

This entry would be made at the time the payment was made, immediately following it (Kurth, I, 446). The order for the check "to order of Charles R. Street, Chairman," is dated and marked paid as of May 2, 1935 (Defendant's Exhibit 96, I, 432), and recites that it is for "Advance on Missouri Refund Case, Legal." The order was made by Mr. Kurth (Kurth, I, 452). Mr. Schulte wrote the word "legal." Presumably Mr. Kurth was present at the time. His guess or belief is, that he sent that order up to Mr. Schulte who came back and asked to know what to charge it against; that witness told him "legal," and that Mr. Schulte probably wrote it down. Witness

evidently told him "legal" (Kurth, I, 452-453). Mr. Schulte is vice-president and head of the accounting department. That was put on there at the time because this slip, Exhibit 97, that Mr. Schulte made up is dated the same day, and there are the words "charge account legal"; so that $15,000.00 was allocated to legal expense on the day that the check was drawn (Kurth, I, 452). The only memorandum Mr. Kurth recalls was the order for the check. No one else in his office knew about the $15,000.00 payment, only as it went through the office routine (Kurth, I, 440).

"Q. Who made that order?

A. Initialed by me" (Kurth, I, 431).

Defendant's Exhibit 97 (I, 434) is an office order for a cashier's department voucher dated 5-2-35, of the Home Insurance Company, payee, Charles R. Street, chariman. It is charged to the account of "Legal" in payment of "Mo. refund case" and is stamped "Paid, May 2, 1935." This money came out of a regular account, just out of the assets of the company, just legal expense (Kurth, I, 449). The special account for the Missouri impounding was not opened in 1935. They did not have any money in that account in 1935. They had no money to put in that account in 1935 (Kurth, I, 449, 447).

Mr. Street had told witness this $15,000.00 was for legal expense, and, later on, when his accountant wanted to know how to place that, witness told him to place it as "legal fees," or "legal expenses." Mr. Kurth knew just as little about it when he answered the accountant as he did when Mr. Street told him. He gained no information in the meantime (Kurth, I, 449).

The check was signed by Mr. Kurth, and he thinks it was delivered to Mr. Haid's office. He believes Mr. Haid was collecting them. The check, he would judge, was made the same day that the meeting was held. It bears date of May 2, 1935, and he thinks it was issued that same day. On seeing the date of the check, it would be Mr. Kurth's recollection that he went back to his office and got it (Kurth, I, 427).

Their Board of Directors met monthly. From time to time they mentioned the progress or lack of progress on the Missouri rate case. Mr. Kurth did not specifically tell his company he had used $15,000.00 of their funds to pay Mr. Street for legal fees in this settlement (Kurth, I, 441).

There was absolutely to be a full accounting as to the $15,000.00. It was to be applied to expenses, and, when the final cleanup of the Missouri impoundings was made, it would be accounted for (Kurth, I, 426).

GROUP THIRTY-FOUR.

These companies did not contribute any sum of money as a result of the meeting, and Mr. Barbour made no inquiry thereafter to find out what had become of Mr. Street's proposal (Barbour, I, 346).

(Note: All of the checks given pursuant to the meeting held in New York in 1935 were cleared through the bank account of Hicks and Folonie. No check so cleared was issued by The Northern Assurance or by London and Scottish Assurance Corporation, Ltd., the two members of this group. See "..... Mr. Street and Mr. Folonie.")

GROUP FORTY-THREE.

At the meeting Mr. Cartlidge did not see any reason for it, yet he volunteered to put up the check then and there (Cartlidge, I, 467). They went from that meeting, prepared a check for $10,000.00 and delivered it that afternoon, but not in connection with the meeting (Cartlidge, I, 464). Both Mr. Warner and Mr. Cartlidge authorized the check after the meeting. It had to be passed by two executives (Warner, III, 355). Mr. Warner probably may have referred to and told Mr. Cartlidge that there had been such a meeting; because he was the only person interested in it (Warner, III, 364). The check was made to C. R. Street as chairman; that is, chairman of the Subscribers Committee (Warner, III, 367). After the check was drawn it was sent over by messenger to Mr. Haid's office. Apparently there was no letter of transmittal. Witness thinks it had just been agreed that they would send it and they just sent it over (Warner, III, 359). In the ordinary course of business there would have been a letter of transmittal with the check (Warner, III, 359), but they just came away from promising to send it and they sent it immediately. They ordinarily send it more formally (Warner, III, 359).

Defendant's Exhibit 324 (III, 356) is in the handwriting of the chief accountant, Mr. Johnson (Warner, III, 355). It is as follows:

"Memorandum For Journal Entry 190.

Company Royal	Month June 1935
Suspense Account	Dr. $10,000.00
To Legal Expense	Cr. $10,000.00

Reason for Transfer Payment made May 2, 1935 to C. R. Street, Chairman, as advance on account of Legal Expense, Missouri Litigation to be charged to suspense, as there is a possibility of its recovery."

Number_____ Approved A. - J.J.
H. T. Cartlidge"

The order on the cashier for the check (Defendant's Exhibit 103, I, 473) is in the cashier's handwriting. It was approved by Mr. Warner and Mr. Cartlidge and bears their initials. The cashier (Mr. Finney) is dead (Cartlidge, I, 471). When they advanced the money, it was originally charged to legal expenses (Cartlidge, I, 493). This order is for a check for $10,000.00 to C. R. Street, Chairman, in settlement of "Advance A-C Missouri Litigation," bearing a notation to charge to "legal expense." Mr. Warner and Mr. Cartlidge together gave instructions for the check requisition (Cartlidge, I, 471, 473). Mr. Warner thinks that Defendant's Exhibit 103 is in the handwriting of the chief accountant. It is initialed by Mr. Warner. He ordered that requisition to be made, and furnished the accountant with the information "legal expense $10,000.00 advance on account of Missouri litigation." He does not think he told the accountant to put in all the information, which is apparently the wording on the check (Warner, III, 358), but he told him "C. R. Street" and to charge it to legal expenses (Warner, III, 358).

The voucher was written by the late Mr. Finney. The check was written in the cashier's department and Mr. Cartlidge signed it. At that time Mr. Cartlidge intended the check to be in payment of legal fees (Cartlidge, I, 475). He charged it to legal expense because he understood that it was legal expense (Cartlidge, I, 475). He had an idea that the $100,000.00 was to be used for legal expense. Beyond the fact that they paid it to the chairman of the Subscribers Actuarial Committee, they had no knowledge as to whom that legal expense was to be paid (Cartlidge, I, 469). This $10,000.00 was simply

as other expenses had been paid since 1922. These companies had not paid $10,000.00 in a lump sum at any other time. They never have paid in lump sums. It has always been a question of assessment. Mr. Cartlidge cannot tell the largest assessment these companies had paid prior to this time specifically for this litigation (Cartlidge, I, 466). He presumes that negotiations had continued from various quarters all the way along. These negotiations have been expense and expense, and this was simply one additional item which they were asked to meet in this particular way. Mr. Cartlidge does not know "the relation of it." The past expense was not in connection with negotiations that Mr. Cartlidge knows of. It has never been segregated (Cartlidge, I, 468).

Mr. Warner cannot tell where the accountant got the information on the memorandum for journal entry that there was a probability of recovery. Mr. Warner had not seen the memorandum until he found this record. It was approved by Mr. Cartlidge, not by Mr. Warner. He does not recall that there was a possibility of recovering the attorneys' fees. The thing he has seen, charged it to legal expenses, which was the instruction given to Mr. Warner. This is a record in the file of his company, but he cannot explain that entry or that file. He did not know that the entry had been changed from legal expenses, as authorized, to suspense. It would seem obvious from that statement that his company understood that there was a possibility of recovery of the attorneys' fees, but all the information Mr. Warner has came to him at the meeting which he attended, and, so far as he knows, that is all that the company had. The only possible explanation he can make is that Mr. Cartlidge, in discussing the matter said, "These expenses are being contributed in advance in behalf of only part of the companies and finally to be apportioned over all of it, so that some of it will be recovered" but he is assuming that (Warner, III, 357).

Mr. Warner can only assume that the whole thing was still in the air and the accountant finally decided they had better wait until they knew where it was (Warner, III, 358). Mr. Warner and Mr. Cartlidge furnished whatever information the accountant had. All Mr. Warner knows is that he authorized it to be charged to legal expenses, where he believed it belonged, and he has never known anything different until this record was dug up. It was transferred back to legal expenses

(Warner, III, 358). When the $10,000.00 check came back, it showed that it went into the bank account of Hicks and Folonie, who were the attorneys; so the $10,000.00 went to Hicks and Folonie and the company charged it as legal expense. Witness thinks that, regardless of the time the transfer might be made, from a bookkeeping standpoint, having once charged it to legal expense, at the end of the year when the books are closed, it will either have to always stand to legal expense or, if you are going to carry it over for ultimate explanation, then it ought to be charged to suspense account (Cartlidge, I, 493). The charge to legal expense was made before they saw the Hicks and Folonie endorsement on the $10,000.00 check. They did not know anything about it then, whether it was legal expense or not. It was made prior to the receipt of the check from the bank (Cartlidge, I, 494).

GROUP FIFTY-SIX.

Some of the companies with which Mr. Wyatt's corporation had a management contract were in the state court cases. This apportionment of $5,000.00 in 1935 was made without regard to the federal cases, according to all of them, regardless of where they were. The Allemannia of Pittsburgh and the Richmond of New York were in the state court (Wyatt, II, 167).

On May 2, 1935, this corporation (Crum and Forster) issued a check to Charles R. Street, Chairman, for the sum of $5,000.00, being Defendant's Exhibit 167 (II, 165). Mr. Parsons approved it. He thinks there was a meeting at about that date, of a number of insurance companies' executives in New York (Parsons, III, 319). Mr. Haid called Mr. Parsons up in the afternoon, saying that he had been asked by Mr. Street if Mr. Parsons' company would be one of the companies that would put up fifty or sixty thousand dollars in connection with the Missouri rate case; that they wanted to get the money as soon as they could; that it was a long job to try to approach 137 companies to get all this money together (Parsons, III, 320). Mr. Parsons said he would be very glad to contribute his part (Parsons, III, 320). He thinks Mr. Haid said that, with one or two exceptions, they were putting up $5,000.00 each and that the total came to around $60,000.00 (Parsons, III, 320). Mr. Haid said it would be properly vouchered and accounted for later, and

that the reason for getting it was the fact that it was too difficult to approach 137 companies, because they wanted to get the money in a short time. Mr. Haid absolutely told Mr. Parsons that Mr. Street would give a full accounting later on, where the money went (Parsons, III, 324). Mr. Parsons does not think that when Mr. Haid talked to him, Mr. Haid mentioned the fact that a compromise was being considered. He said they needed the money for legal expenses and wanted to get it in a short time. Mr. Parsons said, "That is all right. If the rest of the boys have agreed to it, and they have had this meeting, send it over." Mr. Haid sent it (Parsons, III, 325).

Mr. Parsons thinks there was something said that some of it would come back, as they were advancing it for the companies and it would have to be allocated. He does not remember that Mr. Haid said anything else (Parsons, III, 325). It is approximately a correct statement that Mr. Haid gave Mr. Parsons only the information that they needed some $60,000.00 with which to pay legal expenses and needed it now (Parsons, III, 320).

That is all the information that Mr. Haid gave Mr. Parsons. Mr. Haid did not tell why it was that this money was needed instantly, and Mr. Parsons did not ask him. Mr. Haid did not say that anything unusual was happening in regard to it, and did not tell the nature of the legal expenses. Mr. Parsons thinks Mr. Haid asked him to make the check to Mr. Street, Chairman. Mr. Parsons did not know anything about whether Mr. Street was simply a distributing agent. He had never interested himself in the case. At that time he had information on the case only in a general way. He knew the litigation was going on; that was all he knew (Parsons, III, 320).

Mr. Parsons never talked with Mr. Haid about it other than this telephone conversation in May, 1935. He does not remember (Parsons, III, 324).

After Mr. Parsons received this telephone message, he instructed Mr. Wyatt to draw the check. There was no discussion whatever among the officials of his companies as to this transaction. Witness did not advise the officials of his companies as to the nature of the transaction. It was advanced by Crum & Forster, to be vouchered and accounted for later. Mr. Parsons dropped the idea from that point on, and paid no attention to it (Par-

sons, III, 321). He asked Mr. Wyatt to have the check drawn and thinks that he probably told Mr. Wyatt about his conversation with Mr. Haid (Parsons, III, 321). Mr. Parsons had full authority to disburse that money in behalf of his company, and many times that. He made no requisition. He has done that before on many occasions (Parsons, III, 321-322). Probably he gave the check to his office boy to take to Mr. Haid. Mr. Parsons does not think there was a letter of transmittal; he is not sure (Parsons, III, 324). Mr. Wyatt thinks that after the $5,000.00 check was issued, he turned it over to Mr. Parsons, but he is not sure. He has no memory of its delivery, and is a little uncertain as to whether he had anything to do with the delivery. The name of Mr. Erskine of Mr. Haid's office does not suggest that witness delivered the check to him. He does not think he did. He does not recall whether he delivered it to Mr. Haid. He thinks the last time he saw the check was in Mr. Parsons' hands (Wyatt, II, 173).

Defendant's Exhibit 169 (II, 168) shows the voucher attached to the check. It shows the amount of the check, and under the heading "account" are the words, "Ind. & Cos." which means the individual and companies' account in the ledger (Wyatt, II, 169). Any money that is due to this group from the companies is temporarily carried in the individual and companies' account on Crum & Forster's ledger. Then, later on, they collected from the companies. In other words, that was an advancement by this corporation which was to be charged to one or more of the companies which it managed (Wyatt, II, 169). There is nothing on Exhibit 169 which tells witness what the $5,000.00 was for (Wyatt, II, 169).

Defendant's Exhibit 168 (II, 166) is a memorandum of the apportionment of this advance spread over the premium income of the companies in percentages and figured out in dollars and cents (Wyatt, II, 164). The memorandum is entitled "Missouri Impounded Prems. as of 3-31-35" and is as follows:

Allemania	$ 12,736.06	3.77%
British	10,534.74	3.12%
North River	63,385.42	18.72%
Richmond	13,410.74	3.96%
U. S. Fire	144,731.76	42.76%
Western	17,281.94	5.11%
Westchester	76,383.13	22.56%
	$338,465.79	100.00%

Under the above figures appear the following:

Allem.	188.50
B.A.	156.
No. R.	936.
Rich.	198.
U.S. Fire	2138.
W.A.	255.50
Westch.	1128.
	5000.00

Mr. Parsons arranged for this $5,000.00. All Mr. Wyatt did was to pay it out because Mr. Parsons told him to (Wyatt, II, 177). Mr. Parsons directed the writing of the check for $5,000.00 and told witness it was on account of legal expenses (Wyatt, II, 163).

They made the check to Mr. Street as Chairman and thought it was for legal expenses. That check is endorsed "Pay to the order of R. J. Folonie, Attorney," and is signed "Charles Street, Chairman." It was deposited to the credit of Hicks and Folonie, the attorneys representing the insurance companies, including witness' group of companies, so that the $5,000.00 would go to their attorneys, Hicks and Folonie. Witness does not know what they did with the money after they got it (Wyatt, II, 183-184).

Mr. Wyatt cannot recall just when he got the first information that the rate case was settled. It must have been some time before the last memorandum came in. He had no intimation of negotiations for a settlement when he made the $5,000.00 check in May, 1933. He understood that that check was on account of legal expenses of the lawyers handling this particular case (Wyatt, II, 175).

XI.

THE MEETING IN HARTFORD IN 1935.

There was a meeting in Hartford, Connecticut, on May 3, 1935 (Kingan, III, 18; Layton, III, 75; Long, III, 85; Vreeland, II, 462; Bissell, II, 443; R. Clark, II, 415; McCain, III, 332-333; Safford, III, 43).

Mr. Street phoned witness (as he recalls) a day or two before the meeting and asked witness to arrange a gathering for the early afternoon of May 3 to be attended by executives in authority of the Hartford Fire Companies.

Mr. Street did not tell Mr. Long the general nature or the purpose of the meeting; he merely said an important subject that he wanted to bring before the meeting. Mr. Long made no memorandum or writing of that telephone conversation. Mr. Street did not tell witness the names of the persons that he wanted called into the meeting. He merely said the executives in authority of all Hartford companies (Long, III, 85). Mr. Long called all of those men (Long, III, 86).

The invitation was sent by telephone (Layton, III, 75; Vreeland, II, 463; Bissell, II, 444). Witnesses stated that Mr. Long called the meeting (Safford) or that they think the call was from Mr. Long (Layton) (Safford, III, 52, 43; Layton, III, 75). Witness cannot say, offhand, who called the meeting (Kingan, III, 18; Vreeland, II, 463).

Witness does not recall that anything was said in advance as to the nature of the meeting. No particular mention was made of any particular things Mr. Street might have to say (Safford, III, 43). If there was any notice, it was not over a day (Bissell, II, 444). Witness had notice of the meeting (Vreeland, II, 463). It is not unusual in Hartford that in matters of mutual interest, for the one they look upon as the senior president, to invite them to a meeting place. If witness had had any advance knowledge of what the meeting was to be, he wouldn't have known, not being interested in Missouri (Kingan, III, 18).

Mr. Long did not see Mr. Street prior to the meeting. The first time Mr. Long saw Mr. Street was at the meeting (Long, III, 85). The first Mr. Long heard of a

proposed compromise of the Missouri rate litigation was at this meeting (Long, III, 85). When Mr. Bissell got to the meeting he had no information at all that some money was to be raised. When he went to the meeting he had no impression at all (Bissell, II, 444).

The meeting was held in the Aetna Fire Board Room (R. Clark, II, 415; Vreeland, II, 462; Safford, III, 43).

Mr. Milligan, president of the Phoenix, called witness up and asked if they could hold a meeting in his directors' room. Witness' company is rather centrally located, with a large directors' room. For that reason, when the meetings of all companies in Hartford are held, they usually hold them in that room (McCain, III, 332-333).

The meeting was called in the afternoon (Layton, III, 75; R. Clark, II, 416). Witness' recollection is that it was in the latter part of the afternoon (R. Clark, II, 416).

Witness thinks the meeting lasted an hour or an hour and one-half (McCain, III, 340).

Witness forgets who was elected chairman of the meeting. He thinks, perhaps, it was Mr. Bissell (McCain, III, 333). No person acted as secretary of the meeting (Long, III, 86). Witness does not recall that anyone acted as secretary (Layton, III, 77). Witnesses made no notes or memoranda of the meeting (Bissell, II, 450; Safford, III, 44; Layton, III, 77). Witness would have had no use for a memorandum if he did not intend to take care of the matter (Layton, III, 77). No person made any record or notes of any kind that witness knows of (Long, III, 86). Witness cannot recall that he noticed anyone at the meeting making a memorandum of what transpired. He saw no one taking any minutes of the meeting to his recollection. He does not recall that he saw any individual executive making a memorandum of what transpired (Layton, III, 77). Witness did not know that contemporaneously with or about the time of the meeting, Mr. Stinson made a memorandum concerning the matter (Safford, III, 48). Mr. Hooker had nothing to do with the preparation of Mr. Stinson's memorandum, Exhibit 261 (Hooker, III, 132). Witness did not hear it dictated or prepared. Witness' knowledge of this memorandum came to his attention, probably, the following week (Hooker, III, 133). (Note: as to the memorandum found in the file of Mr. Stinson, see page 236 of this report).

Those present at the meeting and the companies represented by those present were as follows (see "I Witnesses" and "II Insurance Groups"):

COMPANIES	EXECUTIVE
Group 2.	
Aetna Insurance Company The World Fire and Marine Insurance Company	(1) W. R. McCain (McCain, III, 335; Kingan, III, 18; Safford, III, 43-44; Layton, III, 75; Long, III, 85-86; Bissell, II, 443).
Group 5.	
Automobile Insurance Company of Hartford Standard Fire Insurance Company of Connecticut	(2) Mr. Stinson (R. Clark, II, 415; Kingan, III, 18; Safford, III, 43-44, 48; Layton, III, 75; Hooker, III, 132; Long, III, 85-86; McCain, III, 335; Vreeland, II, 462).
Group 8.	
Caledonian Insurance Company	(3) R. Clark (Bissell, II, 443-444; R. Clark, II, 415; Long, III, 85-86; Vreeland, II, 462; Layton, III, 75; Safford, III, 43-44; Kingan, III, 18; McCain, III, 335).
Group 20.	
Great American Insurance Company American Alliance Insurance Company County Fire Insurance Company Detroit Fire and Marine Insurance Company Massachusetts Fire and Marine Insurance Company	(4) Charles R. Street (See *supra* "IV Charles R. Street"; also, Bissell, II, 443; Kingan, III, 19; Safford, III, 43; Layton, III, 75; Vreeland, II, 463; McCain, III, 335; R. Clark, II, 416; Long, III, 85).

COMPANIES	EXECUTIVE
Group 22.	
Hartford Fire Insurance Company Citizens Insurance Company New York Underwriters Insurance Company Northwestern Fire and Marine Insurance Company Twin City Fire Insurance Company	(5) R. M. Bissell (Bissell, II, 443, 453; Long, III, 85-86; Vreeland, II, 462; Layton, III, 75; Safford, III, 43-44; Kingan, III, 18). (6) A. G. Dugan (Bissell, II, 453; Deft's. Ex. 219, II, 452).
Group 28.	
London and Lancashire Insurance Company, Ltd. The Law, Union and Rock Insurance Company, Ltd. Orient Insurance Company Safeguard Insurance Company	(7) Gilbert Kingan (Safford, III, 44; Layton, III, 75; Vreeland, II, 462; Long, III, 85-86; Kingan, III, 18; McCain, III, 335; Bissell, II, 443; R. Clark, II, 416).
Group 31.	
National Fire Insurance Company of Hartford Franklin National Insurance Company Mechanics and Traders Insurance Company Transcontinental Insurance Company	(8) Frank D. Layton (Bissell, II, 443; McCain, III, 335; Layton, III, 75; Long, III, 85-86; Vreeland, II, 463).
Group 40.	
The Phoenix Insurance Company Connecticut Fire Insurance Company Equitable Fire and Marine Insurance Company Minneapolis Fire and Marine Insurance Company	(9) George C. Long, Jr., (Kingan, III, 18; Safford, III, 43-44; Layton, III, 75; Vreeland, II, 462; Long, III, 85-86; McCain, III, 335; Bissell, II, 443; R. Clark, II, 415).

COMPANIES		EXECUTIVE
Central States Fire Insurance Company	(10)	Edward Milligan (Bissell, II, 443; McCain, III, 335; Long, III, 85-86; Vreeland, II, 462; Layton, III, 75; Safford, III, 43-44; Kingan, III, 18).
Group 45.		
Scottish Union and National Insurance Company American Union Insurance Company	(11)	J. H. Vreeland (Kingan, III, 18; Safford, III, 43-44; Layton, III, 75; Long, III, 85-86; Vreeland, II, 462; McCain, III, 335; R. Clark, II, 415).
Group 53.		
The Travelers Fire Insurance Company	(12)	Robert D. Safford (Safford, III, 43; McCain, III, 335; Ewing, III, 26; Vreeland, II, 463; Layton, III, 75; Kingan, III, 18).

Mr. Dugan happened to be in Hartford on other matters and attended the meeting (Bissell, II, 453). Mr. Dugan is general agent for the Hartford Fire Insurance Company and is located at Chicago (Deft's. Ex. 219, II, 452). Mr. Clark does not think he was present when the meeting began. As he recalls, he got in during the meeting (R. Clark, II, 416). Mr. Clark's company was interested, or he would not have been at the meeting. His company was in the case (R. Clark, II, 438).

Mr. Street opened the meeting (Bissell, II, 444). He made his report to that meeting (McCain, III, 333). He made an address (Bissell, II, 444; Kingan, III, 19) and did most of the talking (Vreeland, II, 463). He stated the purpose of the meeting (Bissell, II, 444) and was talking about a compromise of the case (Kingan, III, 20).

Witness gained the impression that he wanted to get the views of eastern representatives or executives, where they maintained jurisdiction, as to the wisdom of negotiating a settlement if one was feasible, as to whether

they were sympathetic with such an effort on his part. He wanted to get the sympathetic support of the Eastern executives who had jurisdiction over the matters (Layton, III, 75-76, 78, 79). Mr. Bissell supposed, because it had been authorized by the chief executives, when it came to a matter of settlement, Mr. Street thought it would be wise and proper to consult these same men (Bissell, II, 454). He had come forward to find out whether they were in favor of compromising the case (McCain, III, 333).

Witness, for one, said, "yes," it would be eminently satisfactory; he was perfectly willing to trust Mr. Street in the matter (McCain, III, 333-334). Witness' memory is quite uncertain as to whether any vote was taken. He does not think one was taken (Bissell, II, 450).

Witness would not say there was a common agreement on anything (Layton, III, 78). No one objected to Mr. Street carrying on negotiations to settle the case. There was a great deal of discussion about the case and the whole atmosphere of the meeting was that Mr. Street with his record of fair dealing, square dealing, and with his fidelity to these common interests, his judgment was worthy of very serious consideration. Mr. Street was an honored visitor from the west (Layton, III, 78-79).

Witness understood they were agreeing that Mr. Street could go ahead and make the compromise, if he could make it, on that basis and witness put no other limitation on him (McCain, III, 337).

Witness does not recall anything about Mr. Street reporting back as a result of his compromise or reporting while the negotiations were on, or about a report to be made. If Mr. Street compromised on the basis that he outlined to them, that was satisfactory to them without any report back (McCain, III, 345).

Either the 90-10 or the 80-20 basis would have been satisfactory at that time (McCain, III, 335). Witness thinks all of the Hartford companies were in favor of compromising it (McCain, III, 335).

Witness thinks he was much more in favor of compromising the case than some of the others. It was an old case that had dragged over from Mr. Ives's regime. It was a very expensive case and witness was very much in favor of getting it out of the way if that could be. It cost a lot of money. His company's figures showed they had paid out about $50,000.00 in legal and other expenses

to whomever was handling the case, the Actuarial Committee he supposes. Witness is probably talking about assessments made by the Missouri Inspection Bureau. Witness thinks with so many lawyers here that you would agree that a case that had gone on from 1922 with the number of lawyers engaged and gone up to the Supreme Court a couple of times and been turned out and the multiplicity of cases, they were not doing that litigation for nothing. Witness would say it was very expensive litigation. Witness never saw the bills. They were paid in the western department (McCain, III, 346).

When Mr. Clark arrived at the meeting Mr. Street was explaining that they were negotiating a compromise or that one was being considered (R. Clark, II, 416-417). He was reporting progress of the case, setting forth the progress that was in the offing (R. Clark, II, 438). He was working on a compromise, which was very gratifying news to witness (R. Clark, II, 419).

Witness thinks a great deal of talking was done by Mr. Street (Layton, III, 79). He gave a rather rambling talk and said that he had been doing business in Missouri for some thirty or forty years, and thought he had more experience and knowledge of Missouri than any other man in the business. He talked a good deal about his knowledge of Missouri and his experience and reputation there (Bissell, II, 444-445). He gave a history of the case (Vreeland, II, 463).

Mr. Street said he had represented the interests of the companies in Chicago as chairman of their various committees; that he was the dominating factor in the insurance business in the West for thirty-five or forty years, and that he thought he had handled them pretty well. They agreed with that. They thought that he had handled it pretty well (McCain, III, 333). Mr. Street started off with the thought, which was true, that there was some dissatisfaction in the East with the way the case had been handled by the lawyers in Chicago (McCain, III, 333). Dissatisfaction with the lawyers was not the only reason for the compromise (McCain, III, 334). He particularly emphasized the great disturbance to their business which was ensuing in Missouri (Long, III, 86), the harassment to their agents (Long, III, 86), the bad public relations that had been built up through the years (Long, III, 86). He said the litigation had been very long and expensive (Layton, III, 75). He referred to this long

and tiresome litigation (Vreeland, II, 463), that the feeling among some of the companies in the East was that the matter had dragged too long (McCain, III, 333) that there was some dissatisfaction about the way the case had been dragging on (McCain, III, 334). Witness thinks Mr. Street said there had been an agitation in favor of settlement on the part of some companies (not mentioned) for a long time (Bissell, II, 444). He felt that a compromise was timely (Safford, III, 46).

Mr. Street leaned toward the view that an equitable compromise might be desirable in the interest of all concerned (Layton, III, 76). He thought that it should, if possible, be disposed of in some way (McCain, III, 333). He recommended to the people assembled that an endeavor be made to compromise the case (Safford, III, 44). He thought it should be compromised if it could be compromised (Vreeland, II, 463); that they should attempt to compromise the case and get it out of the way (Safford, III, 46). He thought the time had come when a compromise might be made (Safford, III, 44); when the case should be settled and gotten rid of, if that could be done. He had become persuaded that a settlement would be a good thing (Bissell, II, 444). Taking into account the progress of the case and the decisions that had been made, he had slowly and reluctantly come to the conclusion that it would be a good thing to make a settlement (Bissell, II, 444). He personally felt it would be advisable, if they could get a decent compromise, to negotiate a settlement (Long, III, 86).

He was quite hopeful of being able to effect a compromise (Long, III, 87). He did not state that he felt sure a compromise could be made (Long, III, 87). Witness understood that Mr. Street said he was afraid they were going to lose, or that there was a great possibility of their losing, the rate litigation (Safford, III, 44, 46); that the outcome was uncertain (Layton, III, 75-76; Long, III, 86). He thought a compromise might be a wise thing, owing to the uncertainties of litigation (Layton, III, 79). Witness thinks that Mr. Street expressed himself quite definitely that he could settle the case. He said, "I can settle this case." He said, "I can settle it if the companies want me to" (Bissell, II, 445). He said, "I can settle this case, but I want you to trust me" (Bissell, II, 450). He asked if they were willing to trust him in this matter (McCain, III, 333). He felt that if they would leave it to him and trust him, he could do it for them (Mc-

Cain, III, 339). He asked them to trust him for that. That was the point he made. He said, "Are you willing to trust me not only in the handling of this money, but the hiring of attorneys, because it takes money to hire lawyers and legal expenses which are not very cheap" (McCain, III, 336-337). Witness does not think that Mr. Street discussed the chances of winning the suit. He does not remember that that was brought in by anybody (Vreeland, II, 464-465).

Witness got the impression that Mr. Street wanted them to leave it entirely in his hands, but not that he was withholding information (Bissell, II, 450). The impression witness had was that the company executives there had a great deal of faith in Mr. Street's judgment and were disposed to follow it (Layton, III, 78). Witness assumed that Mr. Street had the full confidence and support of all the interested companies as chairman of the committee, over a period of years (Long, III, 88).

Witness does not recall that Mr. Street told what caused him to think he could make a settlement (Bissell, II, 445) or what caused him to think such a compromise could be made (Safford, III, 45). Witness does not know where Mr. Street could have gotten his assurances (McCain, III, 334). He did not state what brought him to that belief other than that he, as chairman, had been in fairly intimate touch with the situation in Missouri (Long, III, 86). Witness does not think anyone asked him the basis of his assurances (McCain, III, 335).

Witness did not gain the impression that Street had been carrying on any negotiations looking toward a settlement. He gained the impression that Street had been giving it some consideration owing to the uncertainties of the outcome of the litigation. Witness does not recall a positive intimation to the effect that Mr. Street thought it could be settled (Layton, III, 77).

Witness cannot remember that Mr. Street undertook to state what efforts he had made or what negotiations he had had, but simply remembers the general trend (Kingan, III, 20). There had been more or less talk about compromise ever since the suit started, but the first definite talk was at the time of this meeting (Bissell, II, 443). Witness does not think Mr. Street said whether he had discussed a settlement with any of the opposite parties, but witness inferred that Mr. Street, directly or indirectly, must have had some intimation from the other side that

a settlement could be effected or he would not have recommended it (Bissell, II, 444-445). Witness got the impression that there could be some activity in regard to the negotiation of a compromise only in that something must have been behind his coming East and talking with the executives. It would be easy to assume and witness would assume that there had been some activity or negotiations in regard to a compromise. That would be a fair assumption (Safford, III, 45). He did not say with whom he was working on the compromise and named no lawyers on the other side with whom he had negotiated. So far as witness could gather, he left no idea that he had been talking to lawyers representing Missouri in the rate litigation, and witness left the meeting without any particular knowledge concerning those with whom Mr. Street was negotiating (R. Clark, II, 419). Witness got the impression that he had not made up his mind exactly how he would go at it (Bissell, II, 450). Witness does not recall that Mr. Street disclosed the attorneys he would use (Layton, III, 77).

The question was asked why this matter was not taken up with the western departments of most companies, who were supervising the business. Mr. Street advanced the thought that they were too close to the picture, the thing had been going on so long, there had been so many personal feelings involved, and Mr. Street felt that it was a good deal better to have a clean sweep and start in new; that you stood a better chance of getting a compromise that was satisfactory to everybody (McCain, III, 337).

He did not say with whom he had been negotiating (R. Clark) (Safford), or with whom he had talked (McCain) or had been contracting (McCain) nor with whom he was going to negotiate (Safford) (R. Clark, II, 418; McCain, III, 334-335; Safford, III, 44, 47). He did not tell them with whom he had discussed or talked about the matter (Safford, III, 46; Long, III, 86), except that witness has forgotten whether he said he had talked to the Missouri commissioner of insurance in addition to the attorneys. He named no other person to witness' knowledge (Bissell, II, 450). Witness had not a very distinct recollection what Mr. Street said about any powerful person. He may have said it in that May meeting, but if he did witness does not recall (Koeckert, I, 527). He may very well have said it, but if he did witness does not remember what he said about it. He does not have

any independent recollection that Mr. Street said anything about a powerful person in that conference (Koeckert, I, 527). Mr. Street told witness that prior to the meeting of 1935, he had been discussing the subjects with agents and officials, as he termed it, in Missouri, and that he hoped to be able to effect a compromise (Haid, II, 399). Witness does not remember Mr. Hyde's name being mentioned. It might have been (McCain, III, 336). He certainly did not, in witness' presence, mention any influential people besides the attorneys (Bissell, II, 450). He did not, to witness' knowledge, call any names of any officers, or of anybody in Missouri (R. Clark, II, 418).

Mr. Street believed that a compromise could be made (Safford) or that he might secure (Long) or that there was a possibility of arriving at (Vreeland) a compromise on the basis of 10 per cent of the impoundings to be distributed to the policyholders and 90 per cent to be returned to the companies (Vreeland, II, 463; Safford, III, 44; Long, III, 86). Witness recollects that much was made of the 90-10 to be hoped for (R. Clark, II, 418). He either said that it could be compromised on 80 per cent or 90 per cent; witness does not know which (McCain, III, 334, 335, 336). Mr. Street did not say at the meeting that he thought it could be so settled that 80 per cent of the impounded premiums would go to the company, 10 per cent to the public and 10 per cent would go for expenses in handling the case. He certainly stated, as witness recalls, the 90 per cent and 10 per cent compromise (Safford, III, 44). Witness does not recall that anyone asked Mr. Street what caused him to think he could settle for 90 and 10 (Safford, III, 46). Witness said that basis would be satisfactory (McCain, III, 334). Witness has observed testimony on the point, but has not a clear recollection of the terms of the compromise. Witness was not intimately in touch with the details and did not carry in his mind, or charge his mind with the details of the compromise. He listened more to the fact that the general principle of compromise was under discussion (Layton, III, 78). Witness does not recall that the terms of a compromise were discussed in detail and does not have the impression that Mr. Street was instructed or given authority to settle on any particular basis (Layton, III, 78). There was general conversation, the details of which witness does not recall (Bissell, II, 450).

He talked along general lines (Layton, III, 77). He did not say that this was the recommendation of the Actuarial Committee. It was his own thought (McCain, III, 339). It did not occur to witness that he should have the recommendation of the Actuarial Committee rather than of Mr. Street, for the reason that he took the position that he was acting independently here. Mr. Street thought the feeling in the West was against compromise, and he did not believe that it would be possible to get the Western managers to go into a compromise proposition (McCain, III, 339).

Witness knows nothing about a theoretical 16 - 2-3 per cent advance over the 90 brought the return to 105 per cent, or that they will reduce this 105 per cent theoretical rate to 100 per cent which is the rate that was in effect before the Hyde order. Witness was there during the entire meeting, but he does not recall anything about the future rate. He knew the question of the rate was going to be compromised, but he did not know anything about the details of it (McCain, III, 336). The 5 per cent was not discussed at this meeting (Vreeland, II, 475). Witness does not recall that Mr. Street said that after the agreement had been effected the attorneys would appear before the court and secure its approval to the stipulation of settlement (Safford, III, 48).

Mr. Street said that if they were going to compromise this case, they were going to have to have some money (McCain, III, 333). He said he needed some funds (Vreeland, II, 463). He said that if the executives were of like mind with him, regarding the desirability of attempting to secure a compromise, it would be necessary for him to be supplied with funds (Long, III, 86).

Mr. Street did not say what he was going to do with the money (McCain, III, 336). He did not tell particularly what legal expense it would be (R. Clark, II, 418). No one asked what it was needed for, to witness' knowledge (R. Clark, II, 419). Someone asked what he was going to do with the money, and Mr. Street said that you cannot handle a matter of this sort and explain that fully, especially where it might be necessary to get additional counsel (McCain, III, 333). He made no explanation of the need for the money, except legal expenses (R. Clark, II, 418). He had come East to ask for an advance of funds which might be used for the procurement of additional counsel (Long, III, 87). From

the information he got from Mr. Street at the time, witness inferred it was for attorneys' fees and incidental expenses (Bissell, II, 456). Witness thinks that Mr. Street said he might employ or bring in additional or new attorneys (Vreeland, II, 466; Bissell, II, 445). Mr. Street's presentation contemplated the employment of additional counsel (Long, III, 87). It was in connection with employing new counsel that Mr. Street suggested that the companies make advances on account of expenses (Layton, III, 76).

It was witness' impression (R. Clark, McCain) that it was Mr. Street's expectation to hire other lawyers (R. Clark, II, 420); that he was going to hire other counsel (McCain, III, 337). Mr. Street said that he had to get (Bissell) or intimated that it might be necessary to employ (Layton) new counsel, or attorneys (Bissell, II, 450; Layton, III, 76). He suggested the desirability of employing new counsel (Safford, III, 44). Witness understood that the new attorneys were being employed simply to effect a compromise (Bissell, II, 450). Witness does not know whether the new lawyers were to come into the case to compromise it or fight it. No one asked him, to witness' knowledge (Vreeland, II, 466). Mr. Street said that their chief counsel, Mr. Folonie, by reason of the fact that he had been fighting this case in Missouri since 1922, had aroused such personal antagonism with attorneys and others of the State side that he was not the right man to use for compromise negotiations. Furthermore, Mr. Folonie was quite opposed to the idea of making any settlement. Mr. Folonie felt that he had the case won, and it was for that reason that Mr. Street was coming to the executives of the companies in the East, in fact those companies throughout which had the major interest in the impoundments (Long, III, 86-87).

Witnesses' recollection is (Bissell) or they gathered the impression (Safford) that counsel (naming Mr. Folonie) was *persona non grata* to the representatives of the State (Safford) or to the State's side of the litigation (Bissell) (Safford, III, 44; Bissell, II, 455). Witness got the impression from what Mr. Street said that Mr. Folonie had been fighting this case for years and years, and Mr. Street thought it would be advisable to employ additional attorneys; that they would get along better to bring a new lawyer into the case than to take one they already had (Vreeland, II, 466). Mr. Street felt that if they employed local counsel it might be pos-

sible to arrange through them and the State's representatives a compromise settlement of the case (Safford, III, 44).

Witness' recollection is that Mr. Street indicated a little uncertainty as to just what legal counsel he was going to employ, and asked their continuation of their confidence in him that he would employ the proper counsel (Safford, III, 46-47). Witness did not know whether Mr. Folonie was to take the money and go out and hire a lawyer to displace him, and never gave a thought as to whether Mr. Folonie would turn it over to Mr. Street (Vreeland, II, 467). Witness did not know just how Mr. Street was going to handle it, whether with Hicks and Folonie, or alone, and employ the counsel himself. Witness did not understand that Hicks and Folonie were to get the money. Witness understood that counsel could not be employed unless they were paid in advance (Safford, III, 47). He said it would be necessary to approach the people with whom they were litigating through new channels; that their counsel, unfortunately, had gotten himself in the position where the people representing the State would have practically nothing to do with him, hardly speak to him; that he would have to employ new counsel, and it would be quite an expensive matter to bring the thing to a head (Bissell, II, 445).

Mr. Street indicated (as witness recalls) that he had not determined the names of counsel he was going to employ (Safford, III, 51). It is certainly witness' recollection that Mr. Street definitely told the assembled gentlemen that he had not decided on what lawyers he was going to employ, other than Hicks and Folonie (Safford, III, 71). Mr. Street did not say what lawyers, and nobody asked him (Vreeland, II, 464). Witness did not ask who these attorneys in Missouri could be (Safford, III, 55). Witness did not ask Mr. Street who he was going to hire nor what he was going to do with the lawyers he had (McCain, III, 337). Witness stated that no questions were asked, or that he did not recall that anyone asked, concerning the names of the attorneys (Long, III, 88; Bissell, II, 450) or the nature of the services that they were to perform, or anything of that kind (Bissell, II, 450). Witness did not ask what lawyers it was to pay (Vreeland, II, 464). He did not suggest the names of any persons whom he had in mind as additional counsel (Long, III, 88), or that he could hire (R. Clark, II, 420), nor the location of such a person nor his relationship to

any of the parties (Long, III, 88). He didn't name the attorneys (Bissell, II, 446), nor tell the name of any attorney with whom he had been in contact (Safford, III, 51).

Witness does not recall that Mr. Street very clearly stated any reason why he felt new or additional counsel should be employed (Layton, III, 83). There was an implication that he might have additional counsel. It was more an implication than a statement (Layton, III, 77) that he intimated that he needed new or additional counsel. That would not necessarily be any reflection on their existing counsel, but might mean that additional views, additional thoughts of other counsel might be helpful. Mr. Street did not definitely state why he thought new or additional counsel should be employed to witness' knowledge and recollection (Layton, III, 83).

Mr. Street made no suggestion that those he had in mind could do a better job than the ones he had, or anything to that effect (R. Clark, II, 420).

Witness did not understand that this was necessarily a fee to Hicks and Folonie. It might be for these local attorneys that Mr. Street had indicated he intended to employ, accounting through Hicks and Folonie instead of dealing directly with them. Witness was still at sea as to whom these attorneys were (Safford, III, 54). Witness did not know whether it was to pay the companies' own lawyers. It might include lawyers; witness does not know (Vreeland, II, 464).

Witness has no distinct recollection that he got the idea as to whether they would employ new counsel to carry on the litigation further, or for the purpose of settlement. The employment of additional counsel might have been in either direction, either for continuance of the litigation if the compromise were not effected, or for the use of counsel in negotiating a compromise. Witness is not very clear on that point, except it was to be used for legal expenses and proper legal expenses (Layton, III, 81).

Witness cannot say that Mr. Street stated that this money was to be used to compromise the case. Witness does not know that the money had any connection with the compromise of the lawsuit, and is not impressed that it did have any. He does not think it was so connected (Vreeland, II, 465). Witness did not understand that the advance was for the purpose of trying to effect

a settlement, except that it probably involved the engagement of new counsel looking toward a compromise if that finally seemed the expedient thing to do (Layton, III, 80-81). Witness certainly and naturally supposed they would have to pay the new attorneys something without regard to whether the compromise went through or was effected. He does not recall any mention of paying attorneys on a contingent basis. They never lost a case in their lives that they did not pay the attorneys (Bissell, II, 447, 455).

This money was intended to be, or witness gained the impression that it was, an advance of legal expenses or anticipated legal expenses (Layton, III, 76, 80) merely as a matter of convenience (Layton, III, 80) in the usual way as to such expenses in such matters (Layton, III, 76). It would be adjusted, readjusted, or distributed (Safford, III, 47; Long, III, 88; McCain, III, 337) when the thing was finally straightened out (McCain, III, 337) or ultimately prorated (Layton, III, 81; Bissell, II, 460) among all the companies (Layton, III, 81; Safford, III, 46; Long, III, 88; Bissell, II, 460). A reapportionment on a pro rata basis would be forthcoming (R. Clark, II, 417, 438). Everybody would be paying on the same pro rata basis (Bissell, II, 460). Mr. Street would furnish an accounting for (McCain, III, 344) and they might rest assured he would furnish them a statement of every nickel's worth of money they had spent (McCain, III, 334). Each company would receive a complete accounting (Bissell. II, 458, 460) when it was finished and the deck was all cleared up (Bissell, II, 458). Whatever money they contributed would be accounted for in the final accounting (Vreeland, II, 465). The monies expended would be accounted for thoroughly in due time (Safford, III, 48). Witness' company would naturally expect an accounting later on, in the manner that is usual, of whatever funds were distributed (Clark, II, 419). Witness unquestionably assumed that Mr. Street had such control of the situation that he could return the proportionate part of each company (Long, III, 88). (It was explained that there would be a reapportionment when an accounting would be made, and an analysis, R. Clark, II, 417).

Witness does not recall that Street said that this money was to be used only temporarily (Safford, III, 46). He does not think he was informed specifically that repayment of this advance would be made within a reason-

able length of time (Safford, III, 57). They expected full and proper proration later on "It didn't concern us later on" (R. Clark, II, 439).

Witnesses do not recall, or remember, that anything was said by Mr. Street about returning the money if the compromise was not made (McCain, III, 344) or to the effect that if the settlement was not effected the money would be returned (Layton, III, 80).

As to how the companies were to be repaid if the compromise did not go through was not touched upon (Long, III, 87).

Mr. Street said that if any part of the funds was not expended, they would be returned to the companies (Long, III, 87). Witness understood that the money would come back or be returned if the compromise was not effected, less whatever expense in the way of employing additional attorney's fees and anything else in connection with the work that might come up that Mr. Street had (Bissell, II, 446, 447) and it was only the balance, after paying the new attorneys and incidental expenses, that witness thought would be returned if the case was not settled (Bissell, II, 456). Assuming the funds were actually expended for additional counsel and the compromise did not go through, the companies that advanced the money were to be reimbursed (Long, III, 88).

They would receive the return of any over payment of their pro rata share of whatever the expense was (Safford, III, 46). If any company had contributed more than its pro rata share, it would be refunded. If the expenses ran more than the advance, the companies would respectively contribute their proportionate share (Layton, III, 81).

Witness' understanding was that the money was to be returned in the event the compromise did not go through, less any expense that Mr. Street was put to in the way of employing additional attorneys and anything else that might come up in connection with the work.

Witness had nothing definite in his mind as to the amount of money that would come back if the case was not compromised. He might have made a rough calculation himself. The expectation was, that if they failed to get back some of the money others would contribute and bear their proportionate part of the expense. Witness is

quite certain Mr. Street said that was his expectation and belief (Bissell, II, 447).

Witness gained, from what was said, that a fund was needed at that time to start additional legal expense in this compromise (R. Clark, II, 419). It was for legal expense (Vreeland, II, 465). Mr. Street had already intimated that (R. Clark, II, 419). The compromise would require additional legal expense, and this fund was for that purpose (R. Clark, II, 419).

Mr. Street said the money was for (Vreeland) or that they would require additional funds for (R. Clark) or he intimated that there would be some (Layton) or Mr. Street was asking for (R. Clark) or the particular need that occurred to witness' mind was for (R. Clark) legal expenses (Vreeland, II, 464; R. Clark, II, 417, 438, 420; Layton, III, 76) in connection with the lawsuit (Vreeland, II, 464). Mr. Street said, among other things, that the Subscribers Actuarial Committee had no available funds (Long, III, 87). The impression that witness got was that the general funds were somewhat depleted (Vreeland, II, 465). Witness knew that the Western Rating Bureau and the Subscribers Actuarial Committee were assessing the companies from time to time for their expenses for lawyers (R. Clark, II, 420). Witness had no particular legal expenses in mind (R. Clark, II, 420).

Mr. Street said that he needed, or wanted to raise, $100,000.00, the approximate amount he felt he needed for legal expense (Safford, III, 45, 46). He suggested that the companies in Hartford and New York make advances (Layton, III, 76).

Mr. Street advised that he had attended a meeting in New York the previous day (Vreeland, II, 464); that he had already interviewed a group of company officials in New York (Bissell, II, 446); witness' strong recollection was that Mr. Street said that he had already been to New York (Bissell, II, 445); Mr. Street said (Long) or witness thinks that he definitely stated (Safford) that he had been to New York City the previous day (Long, III, 87; Safford, III, 45). Witness does not distinctly recall whether the remarks indicated that the New York meeting was the day before or was to be the day after. There was mention that it would be explained to the executives in New York that there was an opportunity of compromise. Witness did not get a very clear impression as to whether the New York meeting had been or would be held (R. Clark, II, 417-418). It was witness'

firm belief that the companies in New York, and possibly Philadelphia, the outstanding companies, were also helping to create this advance fund for this purpose. Witness does not know that Mr. Street said so in so many words (Bissell, II, 460). Witness' strong recollection is that Mr. Street said that he had talked to a number of companies in New York (Bissell, II, 445). He said he had presented this situation to a number of the leading companies down there (Long, III, 87). He advised that the companies there had agreed to the advisability of a compromise if one could be brought about. Witness understood Mr. Street to say that he had collected a certain amount of money from the New York companies, but does not recall how much (Vreeland, II, 464). Witness thinks he said that he had secured approximately $65,000.00 in New York (Safford, III, 45). Mr. Street said that in New York he had raised or had some money, or that he had promises that money would be forthcoming (Bissell, II, 446). He said that the New York companies were most cooperative and had volunteered to advance what seemed to be, what proved to be, their proportionate part of the fund which Mr. Street estimated at $100,000.00 (Long, III, 87). The companies were asked to contribute $100,000.00 (R. Clark, II, 417). Witness is not certain whether he heard at the meeting or has heard since that Mr. Street wanted to raise a total of $100,000.00 (Vreeland, II, 464).

According to witness' recollection, Mr. Street did not disclose what the total amount of expenses might be. It might be more or less than the $100,000.00 which he was trying to acquire at that time (Layton, III, 76). He said that he did not know how much it would cost to get through with this matter (Bissell, II, 458). Mr. Street said, substantially, that he did not know how much it was going to cost for attorneys' fees and other legal expenses; that it might be more or less than the amount he was asking for. The inference in witness's mind was that it would be more than the amount he was then raising from the Hartford and New York companies; so that when witness advanced $10,000.00, he expected he would have to put up some more money for the reasons that Mr. Street then assigned for wanting to raise this fund (Bissell, II, 458-459). Witness gathered that the amount was something that Mr. Street did not definitely know (Safford, III, 51). Witness does not recall Mr. Street's mentioning any such definite amount as $100,-

000.00. He did not name any definite amount required to bring the thing to a head (Bissell, II, 445). Mr. Street wanted certain contributions from each company present. He said the amount the companies would have to contribute was uncertain (Bissell, II, 445-446).

Mr. Street said he was going to call on them for a round sum which he hoped would be sufficient to handle the matter; but there might easily be considerable additional expense, and if there was, he would come back to them for more later. This is according to witness' recollection. At his time of life, it might, perhaps, not be accurate (Bissell, II, 459). Witness heard Mr. Bissell say that he thought Mr. Street said that they would likely be assessed more money than that raised at the meeting. Witness is not quite clear about that. But when he thinks about it, his impression is that Mr. Street did intimate there might be more money needed. When witness paid his check he did not know whether he was through or not, but if he was not through, he was ready to kick in some more on the word of the committee, the attorney and Mr. Street (Vreeland, II, 479-480).

Witness asked how much money Mr. Street wanted from the Aetna Insurance Company and it seems to witness that Mr. Street said that he was planning to raise $100,000.00; that he had raised something like $62,000.00 in New York and expected to get most of the rest from Hartford, perhaps some of it from Philadelphia (McCain, III, 334). Witness understood that Mr. Street had gotten the remainder of the $100,000.00 from the New York companies (Long, III, 87). He did not tell from what specific companies he had raised the money (Safford, III, 45). Witness thinks that no one asked him (Safford, III, 45).

When the meeting was closed, as witness remembers the figures, the amount he had raised was $37,500.00 and $62,500.00 (Safford, III, 46). Mr. Street wanted or needed $35,000.00, the difference between the $65,000.00 and the $100,000.00 (Safford, III, 45). Witness would say that Mr. Street wanted around $35,000.00 to $40,000.00 from the Hartford companies (Vreeland, II, 464). Mr. Street's purpose in coming to Hartford was (assuming they were in favor of the compromise) to secure the additional thirty odd thousand dollars (Long, III, 87).

Mr. Street was asking the companies he met in New York and Hartford, that he could reach on this trip, to

contribute toward this fund instead of going to all the companies (Vreeland, II, 465). He said he was calling on a few of the larger companies to put up the advance payment (Bissell, II, 460); that he expected to get the larger companies to put up the entire $100,000.00 (McCain, III, 337). He was going to see the companies in New York and Hartford that he could get at quickly, and get them to put him in funds for the time being (Bissell, II, 447). Until the compromise was effected, the larger companies were to help finance it (Bissell, II, 460). Witness realized that a limited number of companies were putting up the original fees (R. Clark, II, 438). Mr. Street had not consulted, and purposely was not consulting, other companies to see whether or not that was to be done; but he was accustomed, with the knowledge and consent of the chief counsel, to pretty well make his arrangements regarding expense (Long, III, 88). Witness does not recall that the point was raised that Mr. Street ought to confer with the smaller companies before compromising their lawsuit. It did not occur to witness' mind (McCain, III, 338). Mr. McCain testified that Mr. Street (except that he did not care to go to the trouble) made no explanation as to why he did not contact the smaller companies, and that nobody asked him (McCain, III, 337-338). One person asked what about the smaller companies (Vreeland, II, 465). Mr. Street said that he did not have time to see all of the companies (Bissell, II, 447); that he did not feel that he cared to go to the trouble of circularizing all of the companies (McCain, III, 337) that if he did what seemed to be the right thing, call a meeting of all 137 companies, it would be a tedious process resulting in the nature of a town-hall gathering, whereas he felt that any attempted compromise should be pursued with a reasonable degree of confidence (Long, III, 87); that it was easier and more expeditious to get a few companies together than to try to get 137. Witness does not recall that Mr. Street said that specifically, but it was merely a matter of expediting (Safford, III, 46). They asked how he proposed to compromise it. He said that he did not believe a town-hall meeting was the proper place to compromise any case, if you were going to do that there was no chance of getting a compromise (McCain, III, 333).

A compromise should be pursued without giving the matter to the press. At least that is what witness derived from Mr. Street's statement. Witness assumed that it

was more or less a confidential meeting, an executive meeting (Long, III, 87). There was certainly nothing private, secret or confidential as between witness' company (or the others represented at the meeting) and the remainder of the 137 companies involved in the litigation. There was no intention to bar the other companies from knowledge (Bissell, II, 460-461). There were no reporters there (that he recalls) but he would have no hesitation in disclosing the facts to an executive of another company not represented. Witness does not think he can answer whether he made any disclosures to any person other than what he told Mr. Smith and Mr. Dugan in the letter (Defendant's Exhibit No. 219, II, 452). The whole matter of this Missouri litigation has been so much discussed over a period of years that witness does not know that it ever was the subject of a general conversation in which he was present after this meeting. He does not recall. He did not report it to his board of directors or any executive committee of his company (Bissell, II, 460).

Mr. Street made it clear that the $100,000.00 was needed immediately (R. Clark, II, 419). He wanted the money raised then (Safford, III, 45). Witness understood that this matter was to be handled quickly (Safford, III, 46). He intimated that he needed it in the near future (Vreeland, II, 465). Mr. Street did not say he wanted the funds on that very day but he thought it was necessary for him to be backed financially in his acquisition of additional counsel; that he contemplated moving promptly and in doing so, knowing lawyers as he did, it would be necessary for him to have the funds (Long, III, 88). Witness got an idea that Mr. Street was rather in a hurry for the money; that it was urgent that the money be raised immediately. The only reason he gave was that he had to get new attorneys and in a way, start fresh with this thing and he thought the time was right and the time to act was then and there (Bissell, II, 447).

Witness cannot say whether there is any other instance where he was called upon to put up legal fees in order to get a case compromised. His company may have done so in connection with losses, claims (R. Clark, II, 439). Witness could not say offhand whether ever before or since he was required to put up in advance to get a suit compromised. It is not unusual to put up funds.

They do not have many cases of this unusual caliber (R. Clark, II, 439).

Mr. Kingan is afraid he cannot give any statement in detail, because he was not acquainted with the Missouri case in any way at all. The only thing he knew of it, as affecting his companies, was the fact each year it was necessary to carry a reserve in their various annual statements, all the details being furnished along with other annual statement data by Mr. Claussen, their Chicago manager. Witness does not quite recollect, but will say a long statement of the difficulties that the companies had been faced with, which naturally, not being acquainted with the case, witness did not follow in detail, and ultimately the statement that certain expenses had been incurred, and as a preliminary to meeting those expenses, companies were invited to make contributions to meet initial expenses, none, as witness understood it, having been paid at that time (Kingan, III, 19).

There was no necessity for witness to fix any of the details of the meeting in his mind, inasmuch as Mr. Street had definitely stated to witness that on his return to Chicago he would explain the position to Mr. Claussen (Western Manager for witness' company). The question never arose in witness' mind for the simple reason it was witness' understanding that it was quite an expensive case and no expenses at that time had been paid. It was simply a case of collecting in a quick way something to meet a portion of the expenses which naturally arise out of a long lawsuit (Kingan, III, 19-20).

Defendant's Exhibit 261 (III, 73) was signed by Mr. Stinson. It was found in the files of the Automobile Insurance Company group (Stipulation, III, 73). Said exhibit (III, 74) is as follows:

"MEMORANDUM

Saturday, May 4, 1935 *In re: Missouri Situation*

"An effort is being made to settle the Missouri rate case thru the intervention of those who wish to terminate this long drawn-out legal struggle,-and what is now proposed is that 80% of the impounded premiums shall be returned to the Companies, 10% shall go the public and 10% will be for the expenses in the handling,- and from and after a date to be fixed, maybe March 1st, the

rate of premium applying in the State of Missouri will be as follows:

The theoretical 16 2/3 advance over the 90 brought the rate to 105%. We will, under this agreement, reduce this 105% theoretical rate to 100%, which is the rate that was in effect before the Hyde order.

It is necessary in carrying on this activity, to use temporarily $100,000, which will be accounted for when the settlement is made and we are asked to contribute our proportion of this sum as shown below.

A meeting was held yeterday in the Aetna Fire Board Room, at which were present Mr. Ross McCain of the Aetna, Mr. Layton of the National, Mr. Milligan and Mr. Long of the Phoenix, Mr. Bissell of the Hartford, Mr. Stinson of the Automobile and Standard, Mr. Vreeland of the Scottish Union and National, Mr. Clark of the Caledonian, Mr. Safford of the Travelers, Mr. Kingan of the London & Lancashire and Mr. C. R. Street, Vice President of the Great American located at Chicago and Chairman of the Actuarial Committee.

We were asked to contribute as an advance for legal expenses the sum of $37,500, as the participation of the group of companies centered at Hartford. $62,500 was raised among a few of the New York Companies on Thursday. Mr. Street is to turn this money over to our attorneys, Hicks & Folonie but it is not to be delivered unless the settlement, as above referred to, is effected. After the agreement has been effected the attorneys will appear before the court and secure its approval to a stipulation of this settlement, as above referred to and the advance money will be accounted for.

The Hartford Companies are contributing as follows:

Aetna	$ 5,000.
National	5,000.
Phoenix	5,500.
Hartford	10,000.
Automobile & Standard	3,500.
Scottish Union	3,000.
Caledonian	1,500.
Travelers	2,000.
London & Lancashire	2,000.
Total	$37,500.

Alfred Stinson
HEM

(Signed) Alfred Stinson."

Witnesses, in reference to Mr. Stinson's memorandum, said:

Witness remembered most of it to be correct, but does not remember about the reduction in the rate part. He was not particularly interested in that feature. That was under the jurisdiction of his company's western department and he does not know about that (McCain, III, 335). He does not recall the details that Mr. Stinson has outlined so specifically about the compromise. He just remembers it was going to be on an 80 per cent or 90 per cent basis (McCain, III, 335).

Witness does not recall that Mr. Street said that the money which they would raise would be turned over to Hicks and Folonie but that it was not to be delivered unless the settlement to which he had referred was effected (Safford, III, 48). Witness does not recall that anyone asked Mr. Street the name of the ultimate beneficiary of witness' company's check and does not think that anyone did (Safford, III, 51). He does not recall that Mr. Street said an effort was being made to settle the Missouri rate case (Safford, III, 44).

Witness would not say there was an understanding that if the compromise did not go through they would have their funds back, and witness did not understand they were going to pay $100,000.00 or the companies were, win, lose or draw; it might be a portion of it, and it might be more (Clark, II, 419).

Witness does not recall any statement that the money was to be turned over to Hicks and Folonie, but not to be delivered unless the settlement was effected (Bissell, II, 445).

Witness does not recall the detailed references to the terms of the compromise. Probably, and quite likely, there may have been some discussion of it (Layton, III, 79).

Mr. Ewing, vice president of the Traveler's Fire Insurance Company, was out of town when this meeting was held (Ewing, III, 26). Mr. Ewing only told what Mr. Safford told him. Mr. Ewing is not very clear, but gave his recollection of what Mr. Safford told him. Mr. Safford did not undertake to give Mr. Ewing the details of Mr. Street's conversation. Mr. Ewing's recollection is that Mr. Safford told him that Mr. Street had come to Hartford in order that he might see all of the executives at one time; that a meeting had been called; that Mr.

Safford attended, and that Mr. Street informed them that it was possible for Mr. Street to compromise the case in some way, and he needed some money for attorney's fees (Ewing, III, 26-27). Mr. Safford did not go into detail with Mr. Ewing as to the nature of this expenditure. Mr. Ewing did not even know it was $100,000.00, but just knew there was some money raised. He does not recall that the question was discussed as to whether the money would be used, if the compromise was not made. He has no recollection one way or the other about that (Ewing, III, 27).

Defendant's Exhibit 277 (III, 133), is a certificate of G. Gardiner Russell, M. D., dated August 4, 1935, to the effect that Mr. Alfred Stinson's condition was such that it would involve great possibilities of danger to his health if he were subjected to the nervous and mental strain of examination and cross-examination as a witness.

Mr. Stinson was vice-president of the companies in group five (Deft's. Ex. 320, III, 327-333), in 1935 and 1936. He is now retired. He lives in West Hartford, Connecticut (Hooker, III, 130). The testimony of Mr. Hooker (III, 130-134) is not fully digested, but it corroborates the doctor's certificate concerning the physical condition of Mr. Stinson. Mr. Stinson did not testify. The signature to Defendant's Exhibit 261 is that of Mr. Stinson (Hooker, III, 132).

XII.

PAYMENT OF THE 1935 ADVANCE BY THE HARTFORD COMPANIES. THE KNOWLEDGE AND ACTIONS OF THEIR OFFICERS.

IN GENERAL.

Mr. Street said he was going to try to pro rate the amount which he needed among the companies present, and he called off several amounts. It appeared to witness that it was calculated according to the amount of business done by, or the size of, the various companies, all of which had money impounded in the Missouri rate litigation (Vreeland, II, 463-464). When witness left he had no impression how much money Mr. Street was going to get out of the Hartford meeting. He did not add it up. Witness has not the slightest impression now how much Mr. Street got out of the Hartford meeting (Bissell, II 446).

Witness has no recollection as to the manner of apportioning the assessment among those present or of how the apportionment was worked out; no doubt with some reference to their approximate interest in the amount involved in the litigation (Layton, III, 76). The Hartford companies were to make up a certain portion of the money, and they were subsequently allotted certain sums (R. Clark, II, 417).

Mr. Street said he would like to have the companies present contribute in round figures toward a sum of money. Witness does not think Mr. Street had the figures already prepared on a sheet of paper (Vreeland, II, 463). Witness has forgotten whether Mr. Street read the list of the amounts he would like from each company, or whether he spoke those personally (Bissell, II, 446). Mr. Street had no list that witness knows of. He seemed to read them off in thousands of dollars. Witness will not say whether he read them off or had it in his head. He stated what the other fellows were expected to pay right there in the meeting. Witness remembers having heard him say the amount which he thought would be the right proportion for some other companies (Vreeland, II, 466). He had a list already made out (McCain, III, 334). Mr. Street had the amounts for the different Hartford com-

panies on a little memorandum sheet that he pulled out of his pocket and just read them off (McCain, III, 339).

First there was a question of apportionment among the various companies that attended. Apparently that apportionment had not been arrived at, and a little figuring was done (witness thinks) between Mr. Street and some other executives, and they arrived at the rough relationship between the amounts to be advanced (Long, III, 88). Witness would not say that the question of actually raising the money took fifteen minutes (McCain, III, 337). Then there was a question as to how soon Street wanted the checks. As witness recalls, Street said substantially, within reasonable expedition, as soon as may be. "Well, do you want them today?" "No." If they could be sent to Chicago, if they could be sent promptly" (Long, III, 88-89).

Nobody questioned Mr. Street's allotment of figures (Vreeland, II, 466). The Aetna contribution was $5,000.00, the National was $5,000.00, the Phoenix was $5,000.00, the Hartford was $10,000.00 and Mr. McCain does not know about the balance of them (McCain, III, 335-336).

It is Mr. Long's recollection that Mr. McCain said, "I will get you our check now." The rest of them had some little discussion as to whether or not the check should be sent individually or whether it would be better to send them through one channel. It was suggested by someone that the companies operating directly from Hartford transmit them to Mr. Long, to be sent to Mr. Street; which Mr. Long did (Long, III, 89).

These checks came to Mr. Long by messenger the same afternoon, as he recalls it (Long, III, 89), and with them Mr. Long received a number of letters (Long, III, 89), namely a letter from the Hartford (Defendant's Exhibit 262, III, 90); one from the Travelers (Defendant's Exhibit 263, III, 90); one from the Caledonian (Defendant's Exhibit 264, III, 92); and one from the Automobile (Defendant's Exhibit 265, III, 93).

(Note: These letters are set out hereafter. See "XII," groups twenty-two, fifty-three, eight and five.)

Defendant's Exhibit 266 (III, 95) is a letter to Mr. C. R. Street dated May 4, 1935, signed by Mr. Long. It is as follows:

"I enclose herewith cheques as follows:

Scottish Union,	$ 4,000.
Caledonian,	2,000.
Travelers,	2,000.
Hartford,	10,000.
Automobile,	3,500.
Phoenix,	6,500.

all being in the nature of advances for litigation expenses in connection with the Missouri case.

You will observe the cheques are made payable either to you as Chairman or to Folonie as Attorney. No acknowledgment is required."

GROUP TWO.

Mr. McCain asked how much Mr. Street wanted from the Aetna and Mr. Street said $5,000.00. Mr. McCain asked to whom the check was to be payable and Mr. Street said to either pay it to the attorneys in Chicago or to him as chairman of the committee. They elected to issue the check to Mr. Street as chairman of the committee. Mr. McCain went to George Burnham, treasurer of the company, and said that he (McCain) would like to have a check for $5,000.00 (McCain, III, 334). Mr. Burnham is the treasurer (McCain, III, 340). Mr. McCain told Mr. Burnham he wanted the check and Mr. Burnham asked to whom, and Mr. McCain said "Charles R. Street, Chairman." Mr. Burnham asked what it was for and Mr. McCain said "for legal expenses in Missouri." Mr. Burnham wrote it (McCain, III, 340). Mr. McCain got that check in person (McCain, III, 334) and brought it back and gave it to Mr. Street (McCain, III, 334, 340).

GROUP FIVE.

Mr. Hooker did not attend the meeting on May 3, 1935, and had nothing to do with issuing the $3,500.00 check (Hooker, III, 132, 150).

Defendant's Exhibit 279 (III, 139) is a requisition of the Automobile Insurance Company for the check (Defendant's Exhibits 278-A and 278-C, III, 138). It recites that the check is on account of advance legal fees to be charged "legal expense" with a notation to charge the Standard Fire Insurance Company with $500.00 thereof. Under date of May 4, 1935, the $3,500.00 was debited on

the journal under general expense and shown to be to "C. R. Street, Chairman" (Defendant's Exhibit 287, III, 149). The expense journal entries show that the item was split into two checks, one of the Automobile Insurance Company for $3,000.00, and one of the Standard Fire Insurance Company for $500.00, and carried as "general expense" (Defendant's Exhibit 288, III, 149). The entries in the legal expense account (Defendant's Exhibit 289, III, 149) throw no light upon the nature of the transaction.

Defendant's Exhibit 265 (III, 93), carbon copy of which is Defendant's Exhibit 282 (III, 143), is a letter dated May 4, 1934, from Mr. Alfred Stinson to Mr. George C. Long. It is as follows:

> "I am inclosing herewith a check for $3,500.00 for advance legal fees in connection with the rate suit in the State of Missouri. Will you be good enough to deliver this to Chairman C. R. Street who is handling this matter and oblige?"

On July 15, 1938, A. V. Linde, Assistant Secretary of the Automobile Insurance Company, wrote a letter in explanation of this $3,500.00 check and other items to an auditor of the federal department of Internal Revenue in which Mr. Linde said that the check was issued under his authority; that they have no letters requesting payment covered by the check and that

> "Regarding the first check of $3,500.00, Mr. C. R. Street called a meeting in Hartford of Hartford companies to secure finances required to continue the Missouri litigation. Alfred Stinson, vice-president of our company, attended the meeting and agreed to advance $3,500.00 for our companies. Mr. Stinson upon returning from the meeting requested from me a check for this amount and the attached voucher was issued from which the check was secured and transmitted to Mr. Stinson" (Defendant's Exhibit 286, III, 147-148).

GROUP EIGHT.

The contribution by the Hartford companies was not on a percentage basis. It was allotted arbitrarily to raise a certain figure among those present. Witness cannot say who suggested the figure which the Hartford companies

would contribute, but witness found out from someone that his company's allotment was to be $2,000.00 (R. Clark, II, 418). They put up $2,000.00, which was in excess of 20 per cent of their impoundments (R. Clark, II, 438) and which, so far as this company was concerned, was rather out of line with their interest in the case (R. Clark, II, 417). The check was put up in connection with legal expenses in conjunction with a compromise that was in the offing (R. Clark, II, 439).

Defendant's Exhibit 210 (II, 421) which is the same as Defendant's Exhibit 264 (III, 92) is a letter which Mr. Robert Clark wrote to Mr. Long (R. Clark, II, 420). Witness' letter is dated May 3, 1935, is marked "Private," and contains the following:

> "In accordance with agreement reached this afternoon, we are inclosing our check in the amount of $2,000.00 payable to Charles R. Street, Chairman, being advance payment *in re* Missouri litigation. This check, I understand you will forward to Mr. Street with others received for the same purpose."

There was no other explanation given to Mr. Clark as to what the check was for except that in this correspondence (R. Clark, II, 434).

Whenever this company sends a check it puts a voucher in requesting that it be signed. It did so in this case. The voucher was made out with the word "chairman" (and Street signed it) because the United States manager knew Mr. Street was the chairman of the committee of five that had charge of the litigation for all of the companies and this company's check for $2,000.00 was made to Mr. Street as Chairman, referring to the fact that he was Chairman of this committee of five in Chicago that had charge of the litigation (R. Clark, II, 436-437).

It did not concern Mr. Clark whether they asked him for $2,000.00 or $500.00 that day. His company was advancing more than the proportionate part of their interest. They were not putting up any load. "We are frequently in our business, called upon to advance funds for distribution one way or another and an accounting to come." They were all in the suit, and Mr. Clark figured he would get an accounting, and if he advanced too much it would be returned later on (R. Clark, II, 438-439). Mr. Clark

never told his board of directors about having put up the $2,000.00 in 1935, nor the circumstances under which he put it up. He told no one in connection with his company, except of course the members of the clerical staff may have seen it in routine (R. Clark, II, 435). It was not discussed in his authoritative bodies. That is not required. He has authority to pay out money as he cares to. Full responsibility is on the United States manager. He did not report the mechanics of any matter of this kind to the home office in Scotland (R. Clark, II, 435-436). The $2,000.00 check dated May 3, 1935, was endorsed to R. J. Folonie. Mr. Folonie endorsed and deposited it "For deposit of Hicks & Folonie," who had been counsel for the companies for years. They were this company's attorneys (R. Clark, II, 437).

GROUP TWENTY.

(Note: The Great American group does not have its home office in Hartford. However, its representative, Charles R. Street, conducted the meeting.)

GROUP TWENTY-TWO.

Mr. Street wanted about $10,000.00 at the time of the meeting from the Hartford Insurance Company, and a ratable proportion from other companies. The Hartford gave him practically $10,000.00 (Bissell, II, 446). Mr. Bissell told the Hartford's cashier to draw a check for expenses in regard to this Missouri litigation and to hold it in suspense until they decided or knew exactly how much of it was to be used, when it would be charged to legal expenses. It is Mr. Bissell's recollection that they placed it in a suspense account (Bissell, II, 450-451). Mr. Bissell telephoned witness for the check and told him to charge it to suspense. It was so charged and in December of that year witness asked Mr. Bissell if they could clear it so Mr. Bissell wrote the western department for a check and it was cleared (C. P. Smith, III, 34).

Ordinarily, this $10,000.00 would be immediately charged to the Western department. That is where it would eventually be charged, but they carried it as a suspense item on their books in Hartford from May, 1935, until the close of that year. That was not at all an unusual thing. It was a very common thing. They very frequently make advance payments for things in their separate three large departments. They carry things in

suspense until the end of the year and close them up, or earlier if they can (Bissell, II, 453).

Mr. Bissell ordered the check drawn, whether he signed it or not (Bissell, II, 448). The check, made out at Mr. Bissell's request, was made payable to C. R. Street, Chairman (C. P. Smith, III, 40). Mr. Bissell thinks it was drawn to Charles R. Street, Chairman (Bissell, II, 447).

Defendant's Exhibit 262 (III, 90) is a letter dated May 3, 1935, to George C. Long from Mr. Bissell. It is as follows:

> "Inclosed please find our check for $10,000 to the order of C. R. Street, Chairman, as arranged at the meeting this afternoon."

Defendant's Exhibit 219 is a letter dated December 27, 1935, from Mr. Bissell to Mr. Dugan, the Hartford general agent in Chicago (Bissell, II, 451). Said exhibit (II, 452) is as follows:

> "You will remember being present at a meeting here in Hartford addressed by Mr. Street where it was agreed that the committee in charge of litigation should receive some payment in advance to take care of attorneys' fees and other incidental expenses. We accordingly advanced to Mr. Street $10,000. This sum has been carried in suspense; it is necessary to get it onto our books for the year. We suggest, therefore, that you send us a check at once so that it may reach us on or before December 31.
>
> "We suggest the amount be charged to legal expense. If your remittance does not reach us by December 31, we shall debit you the amount on our books as of that date and return your check, in which event you can take up the charge in your December journal sheet."

The letter is stamped "Paid December 28, 1935."

The letter to Mr. Dugan was merely to get that item into that transaction. It had been carried as a suspense item and Mr. Bissell wrote to Mr. Dugan on December 27, 1935, in regard to this matter. Mr. Bissell had nothing very definite in mind as "other incidental expenses." He thought there might be court expenses or charges assessed against them in the course of the settlement, as

distinct from the question of refunds or failure to refund premiums. So far as he recalls, the letter was the first information he gave Mr. Dugan concerning this payment to Mr. Street (Bissell, II, 453).

The check is endorsed by Hicks and Folonie. It went to them. It was deposited by them for deposit of Hicks & Folonie (C. P. Smith, III, 40). The check is apparently deposited to the credit of Hicks & Folonie. They were the firm who had this case. They were this company's attorneys. According to this check, the $10,000.00 certainly went to Hicks & Folonie (Bissell, II, 456).

GROUP TWENTY-EIGHT.

Mr. Street requested a contribution and Mr. Kingan told Mr. Street that Missouri was absolutely outside of Mr. Kingan's jurisdiction, and if he required a check it would be necessary for him to obtain it from Mr. Claussen. Mr. Kingan inquired whether Mr. Street would like for Mr. Kingan to write Mr. Claussen, or whether he would see him when he got back to Chicago. Mr. Street said he would see Mr. Claussen; so Mr. Kingan did not even write to any person at all in connection with it (Kingan, III, 19). If details had been mentioned, witness couldn't have understood them, not being acquainted with the details of the case. The principal thing that impressed witness was that so far as witness' company was concerned, Street had taken it up with the wrong man (Kingan, III, 20).

(Note: All of the checks given pursuant to the meeting held in Hartford in 1935 were cleared through the bank account of Hicks and Folonie. No check so cleared was issued by any of the companies in group twenty-eight. See "..... Mr. Street and Mr. Folonie.")

GROUP THIRTY-ONE.

A.

At the Home Office.

There seems to be a check for $5,000.00 dated May 7, 1935, signed by Mr. Bell of the Western department and Mr. Roadifer, the comptroller. The check is to the order of Hicks & Folonie, attorneys. They were the attorneys of all the companies, including these companies, according to Mr. Layton's understanding. He would presume that the $5,000.00 represented by that check was

this group's advance for these expenses that Mr. Street requested. Mr. Layton knows Mr. Bell's signature, and the check is on the form of check used in their Western department (Layton, III, 82).

While Mr. Layton attended the meeting, he had quite an open mind on the whole thing. He was not intimately acquainted with the history of the Missouri rate case, except along very general lines. Therefore, his mind was quite open as to the whole thing (Layton, III, 76). Mr. Layton does not recall any meeting that he ever attended relating to the Missouri litigation other than the 1935 Hartford meeting. He does not recall any discussion of it formally or informally with the other executives in Hartford or any other place beyond that 1935 Hartford meeting. He never heard any report by Mr. Street, personally, as to what Mr. Street did with this money. Mr. Layton does not recall any reports from Mr. Street coming to their office. The report of the Subscribers Committee would go to Mr. Bell. If it came to Mr. Layton's office, it would be referred to Mr. Bell (Layton, III, 80).

In Mr. Layton's situation, and the situation of his companies, his thought at the meeting was simply referring Mr. Street to Mr. Bell who had jurisdiction (Layton, III, 79). It was his intention to refer Mr. Street to Mr. Bell (Layton, III, 76). His reaction was that it was up to Mr. Street, not to satisfy Mr. Layton, but to satisfy Mr. Bell. Therefore, Mr. Layton had use for the information only in a general sense (Layton, III, 79). He would have no use for a memorandum of the meeting if he did not intend to take care of it (Layton, III, 77). Mr. Bell had the details and could talk more intelligently with Mr. Street on that subject (Layton, III, 79). Having faith in their manager in the West, he felt the group's best interest would be served by leaving it to Mr. Bell's good judgment, who was much more conversant with the whole matter than Mr. Layton was (Layton, III, 76).

This group's business in Missouri is supervised by its Western department in Chicago, along with some thirteen states and three Canadian provinces (Layton, III, 76). Mr. Bell handled a large part of their business in thirteen or fourteen states (Layton, III, 79).

Mr. Bell has broad authority and broad delegated powers in a department that has been in existence with

this company for over fifty years (Layton, III, 80; 76). He had the primary and sole responsibility in matters of that sort (Layton, III, 76). Their general manager in the West, Mr. Bell, has handled the details of the Missouri rate case in his administration of their rate affairs in general in their Western department (Layton, III, 76). The details were all in the hands of Mr. Bell, in Chicago, the Western manager (Layton, III, 78). He had been handling the whole detail of the thing since the first rate case originated. The matter was in Mr. Bell's hands. It was handled by Mr. Bell in the regular course of his business (Layton, III, 79-80). Mr. Layton left it up to Mr. Bell and whatever Mr. Bell did about it was all right with Mr. Layton, because of his large responsibilities and long years of service as their manager in the West (Layton, III, 80).

Mr. Layton simply referred Mr. Street to Mr. Bell and told Mr. Street to take it up with Mr. Bell; that the latter had jurisdiction (they were both in Chicago). Mr. Layon referred it to Mr. Bell, their general manager in the West, and took no further action (Layton, III, 76-77).

Mr. Bell did not later communicate to Mr. Layton what action he had taken in the matter (Layton, III, 79). Mr. Bell did not call Mr. Layton over the telephone (to Mr. Layton's knowledge) nor write a report to Mr. Layton about what Mr. Bell had done. Mr. Layton had no occasion at that time to discuss it with Mr. Bell and Mr. Layton does not recall or recollect that he called Mr. Bell over the telephone (Layton, III, 79-80). Mr. Layton did not contact Mr. Bell in any way regarding what transpired, according to Mr. Layton's recollection, and he made no report or recommendations to Mr. Bell (Layton, III, 76-77).

B.

At the Chicago Office.

Mr. Bell gave a check under date of May 7th to Hicks and Folonie in 1935 for $5,000.00. Mr. Street came to him and said there were some attorneys' fees and expenses which had to be met and he did not have the money to meet them, and asked Mr. Bell to advance $5,000.00 to Hicks and Folonie. Mr. Bell distinctly remembers the transaction, that Mr. Street wanted the money to be advanced to Hicks and Folonie; that there would

undoubtedly be an assessment to pay the expense, at which time this $5,000.00 would be deducted from the amount of that assessment (Bell, I, 146).

Mr. Bell did not make the check to C. R. Street, because Mr. Street asked him to make it to Hicks and Folonie, Attorneys. Mr. Street said he had a lot of expenses including attorneys' fees (Bell, I, 151). Mr. Bell does not know why the $5,000.00 check was made to Hicks and Folonie, attorneys, except that Mr. Street requested him to make it so payable. There is no memorandum of any kind on the face or back of the check showing what it is for, and Mr. Street did not tell Mr. Bell the urgency of having this check at that time. Mr. Bell did not communicate with his home office before doing this (Bell, I, 150).

At the time of this $5,000.00 check, nobody from the home office directly conferred with Mr. Bell, nor he with them, orally, over the telephone, by letter or otherwise on the subject of this check. It was reported in the usual account which they render at the end of every month of all receipts and expenditures, with no letter making any explanation. No explanation about it was ever given to the home office; except, naturally, in the audit of accounts out here, all these things come out and are explained, if any explanation is asked for, The home office did not ask for any explanation of this at all. The audit is made by their own accountants from their home office once a year, usually in April, and succeeding the time of this check would be the first time the auditors would see it. When the audit was made, no question was asked about it. They have a great deal of litigation and pay a great many attorneys' fees. They absolutely always show what for; this was Missouri litigation and so appears on their record (Bell, I, 150-151).

Witness certainly has to know what the payouts in his company are for. He does not haphazardly pay out $5,000.00 at one time and $13,000.00 at another in his company, but this was for legal expenses as stated to him (Bell, I, 159).

Mr. Bell would not know whether the settlement had been made when the $5,000.00 check was given. He does not know the date of the settlement. Mr. Street did not tell him that the settlement had been made, and he does not know what the urgency was for paying lawyers before the service was performed (Bell, I, 159).

GROUP FORTY.

Mr. Long's company advanced Mr. Street $6,500.00 (Long, III, 105) (Defendant's Exhibit 295, III, 181).

GROUP FORTY-FIVE.

Mr. Vreeland does not remember any other amount, but he remembers his own $4,000.00 (Vreeland, II, 463). Mr. Street said "The Scottish Union," and pointed at me, "$4,000.00." That is all there was to it (Vreeland, II, 466). It was charged on the books as legal expenses (Vreeland, II, 488). The check was made payable to R. J. Folonie, Attorney. He was the attorney for this company in the Missouri litigation so Mr. Vreeland paid that to his own attorney (Vreeland, II, 488). Mr. Talcott does not recall any memorandum regarding this check anywhere in his files or in his office (Talcott, III, 154). There was no letter of transmittal of the check. Mr. Vreeland did not give Mr. Street that check. His recollection is that he sent it over to one of the other companies that was sending its check. He thinks it was the Phoenix. He knew the Phoenix was sending a check; so he just sent his check over there. Witness was asked why he did that and he said he did not know whether he spoke to Mr. Long or Mr. Milligan, or what (Vreeland, II, 478-479). No one was gathering up the checks in the meeting (Vreeland, II, 479). They were not written in the meeting (Vreeland, II, 467).

Q. There is a difference between somebody coming around and gathering up checks from you, and your sending your check over to the Phoenix to be sent with theirs, isn't there?

A. Yes (Vreeland, II, 488).

Mr. Street said they could make the checks payable either to himself or to Mr. Folonie (Vreeland, II, 467).

Neither Mr. Street nor anybody else said that Mr. Folonie was wanting any money, but this group paid the money to Mr. Folonie (Vreeland, II, 489-490).

Mr. Street gave a receipt (Defendant's Exhibit 221, II, 470) to Scottish Union and National Insurance Company, dated May 3, 1935, reciting that this $4,000.00 is "in payment of .....(handed to Atty. R. J. Folonie)" He signed the receipt as "chairman."

Mr. Vreeland was asked how he accounted for Mr. Street giving the receipt for the $4,000.00 when he paid

it to Mr. Folonie. Mr. Vreeland said he never gave it a thought, and probably never saw the receipt until he took it out to Kansas City. Both the receipt and the check are dated May 3, 1935, but the check was not written at the meeting. Mr. Vreeland would say that the cashier, when he drew the check, also drew the receipt. Mr. Vreeland cannot tell when they got back the receipt (Vreeland, II, 469).

Mr. Vreeland made the check payable to Mr. Folonie for no reason other than its being attorneys' fees or legal fees.

"Q. Had you expected Mr. Folonie to take that money and go out and hire a lawyer to displace him?

A. I didn't know. I didn't give it any thought.

Q. Did you expect Mr. Folonie to turn it to Mr. Street?

A. I never gave that any thought" (Vreeland, II, 467).

Mr. Vreeland was asked whether he agreed that $4,000.00 was the right proportion for his company for the amount his company had involved. He said he did not question it (Vreeland, II, 466). Mr. Street could have called upon Mr. Vreeland for more money than the $4,000.00 and he would have readily paid it on Mr. Street's assurance of what it was for (Vreeland, II, 480).

This $4,000.00 was an item that was charged as a deduction in this company's 1935 income tax return as legal expense. On examination it was disallowed (Talcott, III, 152). The Scottish Union and National Insurance Company received a letter (Defendant's Exhibit 224, II, 483) enclosing a supplemental report (Defendant's Exhibit 224a, II, 484) from the Federal Internal Revenue Department. The letter was dated September 21, 1937. The report showed that an item of $4,000.00 was listed as an unallowable deduction for the year 1935, and contained the following language:

> "Legal expense assessed by Insurance Executives Association is disallowed for failure to substantiate the nature and reason for such expenditures..... $4,000.00."

Handwritten notations appeared upon the report as follows: Opposite the $4,000.00 item under unallowable deductions, appears the letters "O.K." Near the top of

the report appear the words "no protest." At another place appear the words "O.K. Do not protest."

The company took credit in its return for the $4,000.00 legal expense for 1935 and the files indicate it was disallowed (Vreeland, II, 485).

The above mentioned notations are in the handwriting of Mr. Corn, undoubtedly at Mr. Talcott's directions (Talcott, III, 152). Mr. Talcott does not say that he said those exact words, but he said they would not protest it, or that they would not make a claim. They have to file proof (Talcott, III, 153). Mr. Vreeland cannot give a reasonably certain opinion as to who wrote the words "no protest" and "O.K. Do not protest." They have, however, a dozen accountants. He should say Mr. Talcott or Mr. Owen—they are the two heads of departments. It does not look to Mr. Vreeland like the handwriting of Mr. Talcott (Vreeland, II, 487).

The question of income tax must have come up after the year 1935 (Vreeland, II, 486). Mr. Vreeland could not do any more to explain what the item was, than it was legal expenses for the Missouri lawsuit (Vreeland, II, 486).

The notations are not in Mr. Vreeland's handwriting. Somebody in the office evidently put them on the report. But Mr. Vreeland was consulted about what to do about it. The examiner ran across this item on the books and asked what it was for. They told him "There it is, $4,000.00 legal expenses." "What?" "Legal expenses in connection with the Missouri impounded premium." The examiner wanted more information and they could not give it; so "they" would not allow it (Vreeland, II, 485-486).

Later the accountant told Mr. Vreeland about it. Mr. Vreeland thought that the money would be accounted for and they would be given credit. He could tell no more than that, so he let it go (Vreeland, II, 486). Mr. Vreeland did not explain it. He does not know that he told the examiner himself, but his accountant told the examiner that which Mr. Vreeland told the accountant when he told him to draw the check; that it was for legal expenses in connection with the Missouri impounded premiums (Vreeland, II, 486). Mr. Vreeland had in mind that if the examiner needed further explanation he could not give it to him, and that this money would come back to them (Vreeland, II, 487).

Mr. Vreeland did not consult Mr. Long or Mr. Bissell or any of the other executives in Hartford to find out what the item was (Vreeland, II, 487).

It did not seem to Mr. Vreeland to be necessary to write to Mr. Street or Mr. Haid or somebody to give him the information (Vreeland, II, 486). It never occurred to him to write to Mr. Street (Vreeland, II, 486).

Mr. Vreeland does not know why he did not try to find out what the money was for so he could give the examiner the information (Vreeland, II, 486).

It is not a fact that Mr. Vreeland decided that he would rather let the item go in his income tax without the benefit of credit rather than explain it (Vreeland, II, 486). Mr. Vreeland had in mind that (Vreeland, II, 487) it was as broad as it was long (Vreeland, II, 486).

Mr. Vreeland does not handle the income tax matters (Vreeland, II, 487).

They never forgot that item. When it was disallowed in the 1935 taxes, they did not make any further effort to establish their right to it; they could not. They fought as long as they could, and when they found out this thing had been investigated and would not be allowed, they dropped it, thinking it would be adjusted later. If they had gone farther they would have had to file a proof of claim for refund, and then wait six months, and then bring a suit to get it back (Talcott, III, 155).

Rather than try to put all those things in a proof of claim, they just left it out and expected to get the money back. Mr. Talcott tried to take a credit for the $4,000.00 as expense in 1935. It was not allowed, but they thought they were going to get it back (Talcott, III, 153-154).

Much later this money had already come back to them in another account (Vreeland, II, 487). When he got it back he could do just what he afterwards did (Talcott, III, 154).

In 1937, when they thought they had gotten it back they did not put it in as income (Talcott, III, 154). In 1937 when their money came in (the 1937 5 per cent dividend) Mr. Talcott considered and thought that he had gotten the $4,000.00 item back. Then he did not report that amount that came back as income, because he had never taken credit for it as expense in the first place. He treated it as an offset (Talcott, III, 154).

GROUP FIFTY-THREE.

This company contributed $2,000.00 (Safford, III, 48). The check was not issued on a penciled memorandum made by Mr. Safford. He asked the auditor for it because of the element of time. It had been suggested that, to expedite the handling of it, those checks all go out that night and be eventually relayed to Mr. Street through one source. Mr. Safford thinks that was agreed upon at the meeting. Each individual handled the procuring of the check, and sent it to Mr. Long for transmittal to Mr. Street, because, as witness recalls, Mr. Long was perhaps the logical instrument through which it could be handled (Safford, III, 52).

Mr. Street got the checks that day (Safford, III, 45). Mr. Safford had the auditor cause the three companies to draw a check and the auditor drew it on The Travelers Insurance Company, that is the life insurance company. Later it was charged to the fire insurance company, which reimbursed the life insurance company. That procedure is very ordinarily followed (Safford, III, 71). The check was drawn late in the afternoon of May 3, 1935, and the auditor made a penciled suspense item of it because Mr. Safford could not at that time give him the name of the people to whom it was to be paid (Safford, III, 51). Mr. Safford assumed and understood that it was legal expense and the auditor carried it as a suspense item pending the time when Mr. Safford could give him the information. Mr. Safford knew the name of the payee, Charles R. Street, Chairman, and that legal expense would be the proper account, but so far as the name of the individual or firm to whom the check was to be endorsed was concerned, Mr. Safford did not know (Safford, III, 51). When the memorandum was drawn, Mr. Safford told the auditor that the check was to be ultimately paid to Hicks and Folonie, which was the statement that Mr. Street had made to Mr. Safford. Mr. Safford did not understand whether it was to go to Hicks and Folonie as fees, or to go through them to some other person (Safford, III, 54).

Mr. Safford cannot tell why he did not get that information from Mr. Street on that day (Safford, III, 51).

That $2,000.00 went to Hicks and Folonie, the company's attorneys. Mr. Safford told them to make an entry that that was who was going to get it, even before he saw the endorsement on the check. The vouchers

show that it was stated on their face that it was for Charles R. Street, Chairman, Hicks and Folonie, and they held the item in suspense simply because Mr. Safford did not know definitely what particular lawyer it was ultimately going to (Safford, III, 71).

Mr. Safford thinks that they were very keen in following up that little $2,000.00 item during the next year to find out just where it ultimately went. In about three weeks from that day, he saw Mr. Street in Detroit (Safford, III, 71, 54) and asked him about it. Mr. Street told Mr. Safford that he had paid it to their attorneys, Hicks and Folonie, which Mr. Safford would find from the endorsement on the check (Safford, III, 71).

Finding Mr. Street in Detroit quite by accident, Mr. Safford thinks that he either asked Mr. Street or Mr. Street vouchsafed the information that the check had been turned over to Hicks and Folonie (Safford, III, 54).

Defendant's Exhibit 255 (III, 53) is a typewritten memorandum dated May 27, 1935, addressed to Auditor Flynn and signed "Robert D. Safford, Vice-President." It is as follows:

> "Mr. Street advised me the other day in Detroit that the check we sent him was recently endorsed to our Attorneys, Hicks and Folonie, for legal expense, and would be returned to us through our bank in due course showing such disposition of the check."

The memorandum bears Mr. Flynn's stamp dated May 28, 1935; also a handwritten notation, "Cr. Suspense Acc."; also a handwritten endorsement "Chg. Legal Expense 2000." "Fire." signed "F. J. F."

Mr. Safford thinks that what prompted the memorandum was that the auditor had asked him from time to time subsequent to his drawing the check for $2,000.00 as to whether or not he had heard to whom it was being paid (Safford, III, 54).

Nearly a year later, February 26, 1936, Mr. Safford again brought the matter to the attention of his auditor, Mr. Flynn (Safford, III, 72).

Defendant's Exhibit 256 (III, 56) is a memorandum dated February 26, 1936, addressed to Auditor Flynn and signed "Robert D. Safford, Vice-President." It is as follows:

"Referring to the check issued on May 3, 1935, in the amount of $2000 to C. R. Street covering advance for legal expense, I was recently informed that repayment of this advance would be made to us within a reasonable length of time, and suggest that you pend the file sixty days.

"It may take longer than that before the general expense in connection with the case involved is allocated, but you may be assured that when our proportion of the expense is billed to us that in some manner not yet decided upon we shall receive credit for the advance already made."

A month later Mr. Safford took it up further with Mr. Flynn (Safford, III, 72).

Defendant's Exhibit 260 (III, 70) which is the same as Defendant's Exhibit 263 (III, 91) is a letter dated May 3, 1935, from Mr. Safford to Mr. Long. It is as follows:

"I am enclosing my check covering the items discussed with you today which I hope will reach you in sufficient time to answer its purpose tomorrow."

Mr. Safford dictated this letter to Mr. Long following the conference in the Aetna board room on May 3—just a letter transmitting the check. There was no reason for not setting out the purpose of the check in the letter of transmission. Mr. Long was simply the gentleman to whom these checks were being transmitted to Mr. Street. Mr. Safford's letter did not reveal what it was for, but Mr. Long would certainly know what it was for (Safford III, 68-69).

XIII.

CHANGE IN TERMS OF PROPOSED SETTLEMENT.

A.

COMMUNICATION WITH NEW YORK COMPANIES.

When Mr. Street first approached this question of settlement he figured 10 per cent to the policyholders, and "80 per cent" to the insurance companies. Mr. Koop does not know whether he mentioned 50 and 40, or 60 and 30, but it was 10 per cent to the policyholders. He advised them by telegram that he could not get by with 10 per cent. The best arrangement he could make was 20 per cent. Mr. Koop takes it that was after the conference with the Superintendent of Insurance, but he knows nothing about it (Koop, I, 407).

Defendant's Exhibit 86 (I, 408-409) is a radiogram dated May 16, 1935, from Chicago, Illinois, to Mr. Koop, the President of the Great American group of companies. It states:

"AT KANSAS CITY YESTERDAY WITH ATTORNEYS FOR BOTH SIDES AND STATE OFFICIALS SITUATION MUCH CHANGED BY FEDERAL DECISION REQUIRING COMPANIES TO SHOW REFUNDS IN OLD CASE PAID IN FULL BEFORE THEY DECIDE PENDING CASE WHICH MEANS REFERENCE TO MASTER AND MONTHS OF WORK AT GREAT EXPENSE DECISION ON VITAL POINT IN STATE COURT RENDERED UNDER PRESSURE IN OUR FAVOR BUT WITH SOME BITTER JUDICIAL COMMENT THESE THINGS MAKE NINETY PERCENT SETTLEMENT AS ORIGINALLY PROPOSED IMPOSSIBLE AND GOVERNOR FORMER JUDGE HAS MADE SPECIAL STUDY AND CLAIMS STATE WILL WIN ALL CASES UNDER PRESSURE IS WILLING TO COMPROMISE BUT BEST CAN DO IS EIGHTY PERCENT INSTEAD OF NINETY WE PAYING STATES ATTORNEYS AGREED AMOUNT OUR EXPENSES SLIGHTLY REDUCED MAIN PART IMPOUNDED FUNDS TO COME TO COMPANIES IMMEDIATELY

BUT TWENTY PERCENT TO STATE FOR POLICY HOLDERS BALANCE TO ME AND FOLONIE AS TRUSTEES PENDING CLEANUP CONSIDERING MISSOURI SITUATION EXISTING TODAY AND LARGE EXPENSE NECESSARY IN FURTHER PROCEEDINGS RECOMMEND THIS SETTLEMENT NO SETTLEMENT EFFECTIVE UNTIL APPROVED BY BOTH COURTS PLEASE RUSH COPIES TO KURTH CULVER WARNER PARSONS KOECKERT SHALLCROSS IF HOME

C R STREET"

Upon receipt of that telegram Mr. Koop called up the office of Mr. Paul L. Haid, the office of the executives association. Mr. Koop's impression is that Mr. Haid was away at the time, and he turned it over to Mr. Erskine, Mr. Haid's assistant, and asked him to show it to the people that Mr. Street had named in his telegram and get their consent or concurrence to the 20 per cent compromise instead of the 10 per cent. Mr. Erskine sent Mr. Koop copies of Mr. Erskine's telegrams to Mr. Street and Mr. Koop himself sent Mr. Street two telegrams (Koop, I, 409).

Mr. Haid had no information by way of a telegram of a change in the terms of the compromise before it was actually executed, but he knew of the above telegram, because Mr. Erskine showed it to Mr. Haid when the latter came back from out of town. Mr. Haid did not receive a copy of it. It came to his office and Mr. Erskine told him about it, saying that Mr. Koop had called and asked if Mr. Erskine would communicate with these various people and get their approval to the 80-20 basis instead of the 90 and 10 basis. It was finished business when Mr. Haid got back. Mr. Erskine had replied that he had done that and it was "O.K.," or words to that effect (Haid, II, 392-393).

Defendant's Exhibit 93 (I, 413) is a telegram from Mr. Street to Mr. Koop, dated May 23, 1935, stating that Mr. Street sees, from article in Journal of Commerce, it is reported Missouri agents will be paid commission on full amount impounded; that the question was not mentioned in tentative agreement and had been carefully safeguarded by refusal to discuss the question, either privately or in meetings with state authorities, because it was purely a matter between companies and their employees, which they would settle according to their con-

tract with them; that the companies' position had been safeguarded in this respect since impounding began.

Defendant's Exhibit 88 (I, 410) is a telegram dated May 16, 1935, from W. H. Koop to C. R. Street as follows:

> "Telegram received and matter is having attention."

Defendant's Exhibit 87 (I, 410) is a telegram dated May 16, 1935, to Charles R. Street from W. H. Koop, stating that the sender asked Mr. Erskine, Mr. Haid's assistant, to confer with parties named in Mr. Street's telegram, and that Mr. Erskine will wire Mr. Street direct.

Defendant's Exhibit 89 (I, 410-411) is a memorandum from Mr. Erskine, assistant of Mr. Haid (Koop, I, 410). It states that Messrs. Culvert, Koeckert and Warner are agreeable to the new terms of settlement proposed by Mr. Street; that Mr. Warner expressed the opinion that Mr. Street would do well to have a pretty definite understanding regarding the amount of payment to the State's attorneys; that all three are content to leave the subject in the hands of Mr. Street and to rely upon Mr. Koop so to advise him; that he still has to see Mr. Parsons; that Mr. Kurth recently left for the Pacific Coast; that it appears he can be reached at the Cosmopolitan Hotel, Denver, Colorado, May 18, and at the Ambassador Hotel, Los Angeles, California, on May 21, and the memorandum asks if it does not seem best for Mr. Street to get in touch with Kurth; that Mr. Erskine is advised that Mr. Shallcross will be in his office on the twentieth, and that Mr. Erskine has no doubt that he should be able to see Mr. Shallcross then, and will endeavor to do so.

Mr. Erskine sent Mr. Koop a copy of his letter to Mr. Street (Koop, I, 411), namely, Defendant's Exhibit 90 (I, 411-412). It is a letter dated May 17, 1933, to C. R. Street, signed by J. D. Erskine, Secretary. It states the writer incloses a copy of a telegram dispatched late yesterday afternoon and a copy of a telegram sent Mr. Street "this morning." It states that in asking Mr. Erskine to interview the gentlemen mentioned in Mr. Street's night letter, Mr. Koop explained that the subject was confidential, and the writer had no conversations, except with the gentlemen whose opinions had been expressed in the two telegrams sent to Mr. Street. It stated that their approval was given without any

qualifications; that Mr. Warner expressed the opinion it would be well to have a pretty definite understanding regarding the amount of payment to the State's attorneys, but that he gave his approval without reservation or qualification; that all of them assured the writer they would be agreeable to having Mr. Koop report their expressions of approval to Mr. Street. But Mr. Koop requested the writer to do so in his behalf.

Defendant's Exhibit 91 (I, 412) is a telegram from Mr. Erskine to Mr. Street, dated May 16, 1935, stating that Messrs. Culver, Koeckert, Koop and Warner were unreservedly agreeable to the new terms of settlement; that writer would consult Mr. Parsons tomorrow, and Mr. Shallcross Monday, and suggesting that Mr. Street telephone to Mr. Kurth at the Cosmopolitan Hotel, Denver, Colorado, this evening or same place tomorrow; otherwise locate him in care of Howard A. Reynolds, State Agent, Tramway Building, Denver.

Defendant's Exhibit 92 (I, 413) is a telegram from Mr. Erskine to Mr. Street dated May 17, 1935, stating that Mr. Parsons is agreeable to the new terms of settlement.

B.

COMMUNICATION WITH HARTFORD COMPANIES.

Mr. Long thinks you will find that word came to him from Mr. Street for transmission to other Hartford executives regarding a change in the terms. Mr. Long received a telegram from Mr. Street about May 16, 1935. It is Defendant's Exhibit 267. Mr. Long did not receive the telegram on this date. He was away and his secretary evidently took it up with Mr. Long's then president, who made the suggestion that the other offices be contacted (Long, III, 96).

Defendant's Exhibit 267 (III, 98) is a press telegram from C. R. Street to George C. Long marked "confidential." It is dated May 16, 1935, A. M. 2:54, and is as follows:

"AT KANSAS CITY YESTERDAY WITH ATTORNEYS FOR BOTH SIDES AND STATE OFFICIALS/ SITUATION MUCH CHANGED BY FEDERAL DECISION REQUIRING COMPANIES TO SHOW REFUNDS IN OLD CASE PAID IN FULL

BEFORE THEY DECIDE PENDING CASE WHICH MEANS REFERENCE TO MASTER AND MONTHS OF WORK AT GREAT EXPENSE/ DECISION ON VITAL POINT IN STATE COURT RENDERED UNDER PRESSURE IN OUR FAVOR BUT WITH SOME BITTER JUDICIAL COMMENT/ THESE THINGS MAKE NINETY PERCENT SETTLEMENT AS ORIGINALLY PROPOSED IMPOSSIBLE AND GOVERNOR FORMER JUDGE HAS MADE SPECIAL STUDY AND CLAIMS STATE WILL WIN ALL CASES/ UNDER PRESSURE IS WILLING TO COMPROMISE BUT BEST CAN DO IS EIGHTY PERCENT INSTEAD OF NINETY WE PAYING STATES ATTORNEYS AGREED AMOUNT/ OUR EXPENSES SLIGHTLY REDUCED/ MAIN PART IMPOUNDED FUNDS TO COME TO COMPANIES IMMEDIATELY BUT TWENTY PERCENT TO STATE FOR POLICY HOLDERS BALANCE TO ME AND FOLONIE AS TRUSTEES PENDING CLEANUP/ CONSIDERING MISSOURI SITUATION EXISTING TODAY AND LARGE EXPENSE NECESSARY IN FURTHER PROCEEDINGS RECOMMEND THIS SETTLEMENT/ NO SETTLEMENT EFFECTIVE UNTIL APPROVED BY BOTH COURTS/ PLEASE RUSH COPIES TO BISSELL LAYTON MCCAIN OTHERS INTERESTED—"

There is a typewritten notation at the bottom of the telegram as follows:

"Repeated to Mr. Long and all interested Hartford offices the latter by carbon copy. 5/16/35 delivered by messenger."

A copy of this telegram (Defendant's Exhibit 217, II, 441) was received by the Caledonian Insurance Company (R. Clark, II, 442). There is a handwritten notation on that copy as follows:

"Phoned Mr. Long advising my approval. R. C. C. 5/18/35."

At the time of the meeting, Mr. Clark assumed that the 10 per cent was to the policyholders. After this meeting of May 3, 1935, witness' company received a telegram from Mr. Street advising that the best he could do was 80-20 and Mr. Clark's company acceded to the compromise at that time (R. Clark, II, 424-425).

Mr. Folonie was shown the above telegram from Mr. Street and asked if he knew to what the telegram refers when it says that there is a federal decision requiring the companies to show refunds in the old case paid in full. Mr. Folonie infers that that refers to an order of the federal court referring five cases which had been submitted to them to a master to ascertain whether they had made restitution in the old case on which the court reserved its ruling, having formerly held that whether they made restitution or not was immaterial, and had struck out the part of the answer setting that matter down for consideration. This was theoretically to some extent a change adverse to the companies' position and in favor of the State's contentions; but practically, no, because the restitution had already been made in the state court and the money paid into court, and hearings had as to the propriety of it. So, as a practical matter, it was not important (Folonie, III, 223-224).

Mr. Long thinks that, after the telegram, the parties were contacted during his absence to find out if Mr. Street's proposed settlement would meet with their approval (Long, III, 97).

Defendant's Exhibit 269 (III, 99) is a telegram from C. R. Street to George C. Long, dated May 16, 1935. It is as follows:

> "Any objection heard last chance to register them."

This is the second message from Mr. Street. Apparently he had not heard from Mr. Long and was simply checking on him (Long, III, 97). The following handwritten endorsement is on the telegram:

"Communicated to—

Layton	Clark - Sweeney on phone
Bissell	Vreeland - a.m. - talked with me
Stinson	McCormick - to hold
Ewing	McCain - Secretary - ans. to Mr.
Kingan - no action	Street by wire and letter - copy to be sent here"

These notations were apparently made by Mr. Long's secretary. Mr. Long assumes that they were the names of the persons to whom his secretary sent communications

giving them the contents of Mr. Street's first telegram (Long, III, 97).

Defendant's Exhibit 268 (III, 101) is a telegram sent out of Mr. Long's office signed by Henry P. Whitman (Long, III, 100). The telegram is to C. R. Street, dated May 16, 1935, and is as follows:

> "Milligan and Long absent. Messages transmitted to other interested Hartford offices who are wiring you direct Stop Long home tomorrow forenoon."

The following typewritten endorsement appears on the bottom of the telegram:

> "Mr. Long: Since Miss Hayden phoned you, Mr. Street's second telegram has been received and the foregoing sent by me after conference with and at the suggestion of President Layton of the National. H. P. W."

Mr. Long had no direct communication with the other companies personally. He notified Mr. Street that no objections were registered by Hartford friends on the messages presented by the other companies (Long, III, 102). He advised Mr. Street to that effect after a characteristic second message from Mr. Street (Long, III, 97). Mr. Long thinks that on his return the following day he wired Mr. Street that the proposed compromise had the approval of the other executives (Long, III, 96).

Defendant's Exhibit No. 271 (III, 104) is a telegram dated May 16, 1935, from George C. Long, Jr., to C. R. Street. It is as follows:

> "No objection registered by Hartford friends Best of luck to you."

At or about the time Mr. Long wired Mr. Street he did not receive any information from Mr. Street as to what attorneys or in what method Mr. Street had disbursed any of the $100,000.00 (Long, III, 96).

When Mr. Street was at the meeting he had an idea of 90 and 10, and the compromise was later 80 and 20. Mr. Haid did not have any notice of the change of those terms from Mr. Street until he saw that the compromise had been effected. He assumes that he next heard about

the compromise probably when it was published in the paper. He had no communication with Mr. Street from then on until he saw the compromise in the newspapers. However, he knew of the existence of the telegram to Mr. Koop (Haid, II, 392).

Defendant's Exhibit 270 (III, 103) is a letter dated May 16, 1935, from Mr. McCain to C. R. Street. It is as follows:

> "Having wired you today as follows:
>
> 'Think important we complete compromise Missouri case Therefore approve new basis stop Feel sure you will see that we do not pay commissions to agents on any except net premiums and that we retain maximum amount rate increase on future business.'
>
> I now beg to confirm same.
>
> "In my opinion the most important thing is to get this case out of the way on the best basis possible. I have complete confidence in your trading ability and if you feel that 80% is the best that can be done, then I think you should not hesitate too long in closing it."

Mr. Long found Exhibit 270 attached to his file. Witness thinks you will find that Mr. McCain was going to advise Mr. Street direct, and recognizing the community of interest, so to speak, when he wrote Street under date of May 16, he sent witness a copy of just to keep witness advised of his action, to let witness know that he had done what he said he would do (Long, III, 102).

Mr. McCain does not recall the letter, Defendant's Exhibit 270. He identifies his signature. He evidently wrote the letter, but still does not recall that he wired Mr. Street in the language of the letter, "Think important we complete compromise of Missouri case and therefore approve basis," etc., but he would like to. He would have approved it (McCain, III, 345-346). Mr. McCain does not recall any telegram sent to Mr. Long and a copy sent to Mr. McCain about May 16, 1935, but he would not say that it was not sent (McCain, III, 345).

XIV.

NEGOTIATION OF SETTLEMENT.

Some time between the 8th and 14th of May, Mr. Folonie had advice from Mr. Street that the settlement was reaching a point for personal discussion. Mr. Street wanted Mr. Folonie to go to Kansas City to a meeting at the Muehlebach Hotel on the 14th, indicating that this was confidential. Mr. Street advised Mr. Folonie that J. R. Parker would also attend the meeting. Mr. Folonie telephoned Mr. Berger immediately after the conversation with Mr. Street, despite what Mr. Street said about its being confidential, on the theory that Mr. Berger had to know everything that Mr. Folonie did. Mr. Folonie told Mr. Berger that such a meeting was to be held (Folonie, III, 185-186). Mr. Berger received the phone call from Mr. Folonie about May 13, saying there was to be a meeting in Kansas City the following day leading up to the settlement of the litigation (Berger, III, 391). Mr. Folonie told Mr. Berger the meeting would be held in the Muehlebach Hotel and that Mr. Berger was not supposed to know and was to keep it confidential (Berger, III, 396). Mr. Terry probably was told to come to Kansas City when he was in Chicago. He has no recollection of having any correspondence, telephone or telegram from Mr. Street (Terry, III, 379-380). Mr. McCormack thinks that Mr. Street invited him to the meeting, because he went to Chicago and from Chicago to Kansas City with Mr. Street, Mr. Folonie and Mr. Parker. They were all on the same train (McCormack, III, 237). Mr. Folonie's memory is that he did not go to Kansas City with Mr. Street, but he might be mistaken. Information which he secured last March makes him doubtful whether his memory is correct (Folonie, III, 187). His best recollection, until March, 1939, was that he and Mr. Parker went to Kansas City on the same train and Mr. Street had preceded them. From information which he received in Kansas City in March, 1939, he became somewhat doubtful that that recollection was necessarily correct. That information was a statement by the district attorney of what somebody else said (Folonie, III, 186).

The meeting was on (Folonie, Terry) or about (Terry, McCormack) May 14 (Folonie, III, 186; Terry, III, 379; McCormack, III, 236). It was held in the Muehlebach Hotel

(Terry, III, 379-380; Folonie, III, 186-187; McCormack, II, 236, 238) in Kansas City (Terry, III, 379; McCormack, III, 236). Mr. McCormack thinks the meeting was about five days after he had taken $50,000.00 to Mr. Pendergast (McCormack, III, 236).

Mr. McCormack reached Kansas City in the morning some time after eight o'clock and the meeting was held within an hour or so (McCormack, III, 238). The meeting convened in the morning (Terry, III, 380). Mr. Terry came by himself. He does not know whom he saw first, probably Mr. J. V. Parker (Terry, III, 380). He probably saw Mr. Parker in the hotel (Terry, III, 380). Those present at the meeting were:

1. Paul W. Terry	(Terry, III, 380; Folonie, III, 188, 211).
2. Robert J. Folonie	(Folonie, III, 186-187, 188, 211; Terry, III, 381, 383; McCormack, III, 238, 239, 236).
3. J. V. Parker	(Folonie, III, 186-187, 188, 211; Terry, III, 380, 383; McCormack, III, 236).
4. Charles R. Street	(Folonie, III, 186-187, 188, 211; McCormack, III, 236, 238; Terry, III, 380).
5. A. L. McCormack	(Terry, III, 380, 383; McCormack, III, 236-237; Folonie, III, 211, 188).
6. John T. Barker	(McCormack, III, 236, 238, 239; Terry, III, 380; Folonie, III, 188, 211).
7. R. Emmett O'Malley	(McCormack, III, 236, 238, 239; Terry, III, 380; Folonie, III, 188, 211).
8. Mr. Poor, Chief Rater in the Insurance Department	(McCormack, III, 236; Terry, III, 380; Folonie, III, 188, 211-212).
9. Mr. McHaney, Attorney for the Insurance Department	(McCormack, III, 236; Terry, III, 380; Folonie, III, 211-212).

When Mr. Folonie went in, Mr. Street and Mr. McCormack were there (Folonie, III, 188). Different people

were at the meeting at different times (Folonie, III, 188). Witness thinks almost everyone left the room at different intervals, in and out all of the time (McCormack, III, 239). The meeting lasted until something like five or five-thirty in the afternoon (McCormack, III, 239).

Mr. Street did considerable talking (McCormack, III, 238). He made his usual long explanation of the litigation, and stated that he was very anxious for some sort of an agreement to be reached to dispose of it (McCormack, III, 238). There were seven, eight or nine people in the room and everybody was talking at different times. It was a kind of town hall meeting (McCormack, III, 238). Witness thinks that Mr. Barker, Mr. Folonie, Mr. Street and Mr. O'Malley were the ones that exchanged conversation. They discussed the matter fully because they were familiar with it. Witness knew nothing about the details of the litigation (McCormack, III, 238). There was mostly a discussion of some phases of the settlement, a discussion of ideas, reimbursement to the state on the old cases and the new ones in witness' presence (Folonie, III, 189).

Mr. Street was insistent upon all of the money on the theory that the experience of the companies would show that they were entitled to it. Witness thinks Mr. Street made some statement to the effect that the masters (or referees) in both federal and state cases had indicated that the companies were entitled to practically all the money. Witness thinks there was some deviation in certain instances in certain conditions, but witness does not know whether it was as to individual companies. In Mr. Street's opinion, if the courts adopted the referee's report, the companies would receive all the money (McCormack, III, 238-239).

Regarding the suggestion that the master's report had been favorable, of course Mr. Barker would take the position that they could file certain objections that would upset the master's report. On the other hand, Mr. Folonie said he could answer the objection that would sustain the master's report. It was just one of those usual discussions in which everybody gives his own opinion and everyone felt he was right (McCormack, III, 239).

The discussion while Mr. Folonie was present covered two items which he remembers distinctly and he thinks very little else was discussed while he was present. They were the amount to be paid in the old restitution case, in

reimbursement of expenses to the state (which was $200,000.00), and the fees that Mr. Barker and his associates proposed to exact from the Superintendent and which the insurance companies were to pay the Superintendent to reimburse him. That was in the forenoon. Mr. Parker also discussed the rates in a very general way with no particular detail. Mr. Folonie told Mr. Street that he (Folonie) objected to the $200,000.00 in reimbursement of expenses in the old restitution case, because he thought it was more than the state had expended and that the amounts of the fees under discussion for opposing attorneys were too large. Mr. Street asked whether he thought they were exorbitant, and Mr. Folonie replied that he would not use that word, but thought they were too large (Folonie, III, 210-211).

There was quite a little discussion over the question of fees for the attorneys for the state, over an allowance for state expenses, some discussion in connection with the payment of agents' commissions on the impounded funds, practically no discussion (as witness can recall) with reference to the rates or the rate levels. There may have been a little discussion on the subject of hail coverage in connection with tornado policies; there probably was. There was a discussion particularly about a recent hail storm which attacked Richmond, Missouri, where they had sustained a heavy loss and had practically no hail coverage (Terry, III, 381).

Mr. McCormack does not recall anything being said about "this fund" or any discussion about it on the way to Kansas City (McCormack, III, 238). Nothing whatever was said at the meeting about the payment of the $500,000.00 or $750,000.00 for the settlement. Mr. McCormack does not think anyone reported that, prior to the meeting, $50,000.00 had been delivered by him to Mr. Pendergast (McCormack, III, 240).

Mr. Folonie was present in the room with this crowd of persons. There was an adjoining room—two rooms reserved for the occasion (Folonie, III, 210). He was not present through the whole time. No settlement was agreed to at this time (Folonie, III, 211). Mr. Folonie, Mr. Parker and Mr. Terry were not there when they reached the settlement or discussed the remaining details (Folonie, III, 211). About noon Mr. Street asked Mr. Parker, the rater, Mr. Terry of the Missouri Inspection Bureau, and Mr. Folonie to leave the room. They had not then reached any settlement or definite conclusion on rates, nor

any amount to be paid in the current litigation for expenses of the state, nor what proportion was to go to policyholders and to companies. The three left the room. Mr. Folonie was expressly excluded from the negotiations that ended in the settlement (Folonie, III, 211). There were so many people present at the settlement meeting when Mr. Street put Mr. Folonie, the chief counsel in the case, out of the room, and Mr. Folonie was not even permitted to be there when they talked settlement. All he could do was get out of the way, and that was all. He was trying to do the best he could to keep out of Mr. Street's way. Mr. Street was doing it all himself (Folonie, III, 226). Mr. Folonie has since been informed that one or more of them also left the room and went out into the hall, but he does not know that of his own knowledge. They did not come in the room where he was (Folonie, III, 212).

Mr. Terry does not know how long the meeting lasted because during the course of the meeting it is his recollection that Mr. Parker, Mr. Folonie and he were asked to leave the room (Terry, III, 381). Mr. Street asked them to leave (Terry, III, 381). Mr. Terry has no recollection of what particular phase of the matter was under discussion and consideration at the time he was asked to leave, nor of the circumstances under which he was asked to leave (Terry, III, 381-382). He cannot remember any others that were asked to leave (Terry, III, 381) and cannot tell definitely who remained in the room. Mr. Street and Mr. O'Malley were there (Terry, III, 382) and he believes that Mr. McCormack was in the room when they withdrew, but is not reasonably sure that Mr. McCormack was there (Terry, III, 383-384). He cannot tell whether the other gentlemen left or stayed. He paid no attention to the others (Terry, III, 382). Mr. McCormack and Mr. Street remained in the room for hours thereafter (Folonie, III, 211). Mr. Barker, Mr. O'Malley, Mr. Poor and Mr. McHaney, attorney for the insurance department, remained in the room (Folonie, III, 211-212). Mr. Terry has no knowledge as to why he was requested to withdraw. No explanation was given for the request. Mr. Folonie made no statement as to why they had withdrawn or had been requested to withdraw, that witness can recall. Mr. Terry has no way of knowing what matters were under discussion in the adjoining room (Terry, III, 382).

Mr. McCormack has no recollection that Mr. Street requested anyone to leave the room and remain out while the negotiation continued (McCormack, III, 239). At least, he does not remember any request. It is his best recollection that Mr. Folonie and Mr. Parker were out of the room in the afternoon for at least two hours, and that witness was with them, sitting in an adjoining room. Witness went in and out of that meeting all day long as he pleased. He has no recollection that anyone requested him to leave the room at any time (McCormack, III, 239).

They were given no direction about returning or being available in the event they were called back. They did not know whether they were to be called back into the meeting again or whether they had left it finally. Witness was never called back. They kept themselves available, most of the time in an adjoining room with the door closed. They stayed around there until along in the early evening, somewhere around 4:30 or 5:00 o'clock. Then Mr. Street came out and announced they had reached a compromise (Terry, III, 382). They finally reached a settlement, came out in the other room and told what it was (Folonie, III, 211). Witness thinks that Mr. Street announced that they had reached a settlement, an agreement, and that they were going to recess for dinner and meet again after dinner, the evening meal. Witness attended the meeting after dinner. It was more or less kind of a summation of what they had discussed during the day, and the attorneys were present and were instructed to draw up the necessary agreements for settlement of the rate controversy. Witness presumes the settlement was for the whole matter, both state and federal courts (McCormack, III, 240).

Witness thinks that the same group was present at the meeting after dinner (McCormack, III, 240).

When Mr. Street announced that a compromise had been effected he told the terms of it in a general way. Witness does not recollect what he said. It was in a general way, in the terms of the written stipulation (Terry, III, 383).

Mr. Folonie got a little piece of paper that Mr. Street wrote out in longhand, giving two or three figures as high spots—percentage to companies, percentage to policyholders, amount to be allowed for taxes. He apparently never understood, or mis-stated the situation all the time. According to Mr. O'Malley the allowance in the old

rate case was reimbursement of the state's expense and allowance to the attorneys, payable to the Superintendent in the new litigation with reimbursement of state's expenses. Mr. Street insisted on putting the $200,000.00 reimbursement of state's expenses as taxes, apparently under the belief that the companies had not paid taxes on the impounded premiums. He was wrong about that and Mr. Poor, the rater for the state, told Mr. Street he was mistaken and that was not why they asked it. Mr. Folonie explained it to Mr. Street, but in the written slip Mr. Street still called it taxes (Folonie, III, 190).

Mr. Folonie does not recall whether, when the meeting was over, he went to Mr. Berger's office that afternoon. He did not come back to Chicago (Folonie, III, 189).

Witness was not called back into the meeting. He never attended any further meeting. He got no information other than what Mr. Street gave the three of them at that time. Witness thinks he left Kansas City the next night. From the time that Street gave this information up until he left Kansas City he attended no function or conference with anybody in connection with this matter (Terry, III, 383). The attorneys had the instructions about how to draw the settlement before witness left but he did not remain until it was put in writing (McCormack, III, 240). He returned to St. Louis that evening, and he thinks Mr. Street returned to Chicago (McCormack, III, 240). He never saw it signed (McCormack, III, 240). Mr. Folonie remained in Kansas City trying to put on paper the settlement agreement that Mr. O'Malley and Mr. Street said they had arrived at. Mr. Barker and Mr. Folonie, with some help from Mr. Berger, tried to put those things on paper. Mr. Folonie found it necessary to telephone Mr. Street in the progress of it, asking his authority to do this and that in connection with putting it on paper, due to the fact that Mr. Folonie had only an incomplete knowledge of their settlement agreement. Mr. Folonie finally drafted it, and left it with the understanding that Mr. Barker would have Mr. O'Malley sign it and put his own name on as a witness to Mr. O'Malley's signature; that Mr. Barker would then send it to Chicago, whereupon Mr. Folonie would get Mr. Street's signature and add his own as a witness to Mr. Street's signature, and then copies, or duplicates, would be sent back to Mr. Barker for his clients and Mr. Folonie could keep appropriate copies for his own clients (Folonie, III, 189). Mr.

Folonie was in Chicago on the 18th of May. He thinks he came back to Chicago on the 17th, but it may have been the 18th. So far as Mr. Folonie knows, Mr. Street left Kansas City the night of the 14th. Mr. Folonie did not see Mr. Street between the night of the 14th and the 18th, that he recalls. To the best of his memory he did not (Folonie, III, 180). Mr. Folonie remained in Kansas City on the 15th and 16th—several days, and believes he landed back in Chicago on the 17th, and the signing of the paper by Mr. O'Malley was Saturday, the 18th, and that is the date the two papers bear. There were two settlement papers. They were signed by Mr. Street in the following week, either the 20th or the 21st, but dated the 18th (Folonie, III, 189-190).

The evening of the compromise Mr. Folonie called Mr. Berger and said that Mr. Folonie and General Barker would be in Mr. Berger's office the following morning. Mr. Berger did not see Mr. Folonie before he and General Barker came to Mr. Berger's office. General Barker was the attorney representing the insurance department. If they had a chief counsel, Mr. Berger would say that General Barker would carry that designation for the insurance department. Mr. Berger would not say that General Barker and Mr. Folonie conferred with him when they came to his office. Between them, they undertook to put down on paper the settlement agreement which was later signed. It was then that Mr. Berger learned the general terms of the compromise. At that time Mr. Folonie had no discussion with him revealing any of the negotiations other than what the results were. Mr. Berger thinks that at that time, Mr. Folonie informed him that he (Folonie) had been excluded from the room. That was on the fifteenth. They were in Mr. Berger's office the fifteenth and sixteenth (Berger, III, 392-393).

Mr. Folonie and Mr. Berger spent the greater part of two days drafting the stipulation for settlement and getting it into final form. The reason it took that time was:

There were several things that Mr. Folonie and Mr. Barker were not clear about which necessitated reaching Mr. O'Malley on the telephone on Mr. Barker's part and on reaching Mr. Street on Mr. Folonie's part. The 30 per cent that went to the trustees came into existence during the time of putting the agreement down on paper, because, as part of the agreement the attorneys' fees of $500,000.00 were to be paid to the attorneys for the Superintendent of Insurance, and $200,000.00 was to be paid to

the State of Missouri in reimbursement of their expenses by paying through the Superintendent of Insurance. That trust fund was created as a means of making that money immediately available. As something would be dictated they would sit around and tell stories while the girl was transcribing it, and then it would be redictated. That is how most of the time was taken up (Berger, III, 395).

During the time they were drafting the stipulations and orders for settlement Mr. Berger did not confer with or see Mr. Street. He only saw Mr. Street three times in his life; first, when he appeared as a witness before the master in Chicago, second, when Mr. Berger went with Mr. Folonie to confer with Mr. Street for a few minutes about the restitution case, third, when Mr. Street appeared in the spring of 1937 before the legislative committee. The second time may have been in the early part of 1935 (Berger, III, 396-397).

Mr. Folonie has the only executed copies of stipulation that exist so far as he knows, in connection with the insurance companies, in his personal safe deposit box in Chicago. He has two original copies, one of each. The signatures appearing there are R. E. O'Malley, Superintendent of Insurance, C. R. Street, Agent, and to the left of those names appear John T. Barker and R. J. Folonie (Folonie, III, 190-191). The contract of settlement was introduced in evidence and marked "Defendant's Exhibit 2" (I, 27-31). The compromise was dated May 18, 1935 (Henne, I, 25, 47).

The compromise agreement was signed about May 18, 1935. Witness does not remember the exact date (H. Clark, I, 254).

The exhibit is a written agreement dated May 18th, 1934, between R. Emmet O'Malley, Superintendent of the Insurance Department of the State of Missouri and Charles R. Street, as agent for the Stock Fire Insurance Companies parties to rate litigation in the United States District Court for the Western District of Missouri, and in the Circuit Court of Cole County, Missouri.

It recites that it is the mutual desire of the parties to settle the controversy and it is mutually recognized that the insurance experience in Missouri justifies an order which the Superintendent, after investigation, has determined he should justly make respecting just rate levels; that the Superintendent of Insurance will make an order setting aside the order of May 28th, 1930, and

will make a new order retrospective to June 1, 1930, approving four-fifths of the increase of fire and windstorm rates proposed by the filing of December 30th, 1929 (styled 16 2-3 per cent increase on such classes), and disapprove the proposed increase to the extent of one-fifth thereof on each of such classes;

That the parties will, by their attorneys, appear in both the United States Court and the Circuit Court of Cole County, and join in seeking appropriate orders from such courts for distribution of the money now impounded or hereafter to be impounded to effect the return to policyholders of one-fifth thereof, and if said courts approve such courses, that such distribution be made under direction of the Superintendent of Insurance, and that the custodians of such funds be empowered to deliver their records and turn over to the Superintendent twenty per cent of their moneys with them impounded, covering writings to December 31st, 1934; and that if any portion remain after the Superintendent shall have diligently undertaken to return it to policyholders, that the Insurance Companies waive any claim to the remains of such one-fifth; that one-half of the whole fund shall, as soon as conveniently may, be restored by the custodian of said funds to the insurance companies who deposited the same (or to their lawful representatives); that the remainder of the funds upon writings to December 31st, 1934, shall be delivered to Robert J. Foloie and Charles R. Street as a payment, and discharged to that extent of any obligation of returns thereof, to the insurance companies, it being the intent of the parties that said trustees receiving said sum will discharge various items of disbursements, thereinafter more specifically mentioned, make such other disbursements as might be proper and appropriate, and account to such companies for the same; that the companies would discharge all lawful claims of the agents for commissions; that the trustee will pay to the Superintendent of Insurance the sum of $200,000.00 as reimbursement and to the record attorney for the Superintendent the sum of $500,000.00 for their final fees and expenses for legal services rendered; that the insurance companies will file amendments or supplements to their bills of complaint, setting forth such contemplated order of the Superintendent, or take the appropriate means to present to the courts in which the proceedings are pending, the agreement to settle the case, and the Superintendent will cause answer to be

filed or otherwise appropriately confess the same and consent to decrees for distributions of the impounded moneys.

There was a further provision that further impoundments were contemplated to cover insurance writings in January, February, March and April, 1935, which might be temporarily retained by the custodian, together with any interest on the impounded funds, until the court should find the proper charges of the custodian had been cared for and the accounts appropriately settled; and that the insurance companies would file new rates with the Superintendent retroactive to May 1, 1935, and thereafter file basis schedules on various classes, as already submitted to the Superintendent, which, when applied and in conjunction with other basis schedules, will produce a rate level not to exceed 97.6 per cent of the printed rates. (Note: The contract contained other collateral provisions which throw no light on the present controversy.) The compromise settlement was dated May 18, 1935 (Henne, I, 25, 31). The agreement was witnessed by Robert J. Folonie, Attorney for the Insurance Company, and by John T. Barker, Attorney for the Superintendent (I, 31). The agent's commissions would have to be paid out of the companies' receipts—out of the 50 per cent (Koop, I, 416). A lot of the 50 per cent went back to agents (Bowden, II, 93).

XV.

THE MEETING IN NEW YORK IN 1936 AND COLLECTION OF GENERAL ASSESSMENT.

A.

THE MEETING.

Mr. Haid was familiar with the so-called 30 per cent fund and knew that Mr. Folonie and Mr. Street acted as co-trustees of this fund. He was familiar with the 11 per cent payment out of the 30 per cent. He first learned that that dividend was to be paid when he received either a telegram or telephone message from Mr. Street, which he thinks was sometime in March, 1936. There is no such telegram in his files (Haid, II, 393). If there was a telegram Mr. Haid does not have it now (Haid, II, 394). Mr. Street asked Mr. Haid to assemble certain named individuals again on another specified date in witness' office which witness did. He does not recall whether he was told the purpose for which they were to be assembled (Haid, II, 393-394). In March, 1936, there was a second meeting in the City of New York (Warner, III, 361). Mr. Warner thinks that this second meeting in 1936 was in March (Warner, III, 364, 368). He cannot remember the actual or exact date (Warner, III, 364, 368). It was in Mr. Haid's office (Warner, III, 368; Haid, II, 394). Mr. Haid called them. He does not recall and has no way to fix the date for which he was asked to call the meeting (Haid, II, 394). Nothing occurred that would throw light on how the meeting happened to be called (Warner, III, 371). Mr. Haid does not recall that Mr. Street came to his office prior to the meeting. Usually when these meetings happen everybody assembles about the same time (Haid, II, 394). It was a very short meeting; they were there a very short time, witness thinks a quarter of an hour or twenty minutes (Warner, III, 363, 369). It was not a very big meeting and not a very long meeting (Warner, III, 361). Witness thinks there were not more than five or six present (Warner, III, 363); only about one-half dozen altogether (Warner, III, 369). Mr. Warner was the only one from his group that attended. He attended the entire meeting (Warner, III, 361). Mr. Haid was

there or in his office (Warner, III, 361). Mr. Culver was out of town (Haid, II, 394). There were prominent men in the business, all executives of big insurance companies (Haid, II, 410). Mr. Haid was only an interested spectator. He represented no company. He could neither give authority nor take it away (Haid, II, 396). There was evidence that those present at the meeting and the companies represented by those present were as follows (see "I. Witnesses" and "II. Insurance Groups").

Group 12.	**Executive**
1. Continental Insurance Company 2. American Eagle Fire Insurance Company 3. Fidelity Phenix Fire Insurance Company 4. First American Fire Insurance Company 5. Niagara Fire Insurance Company	(1) Mr. Sturm (Warner, III, 369, 361; Haid, II, 394, who was chairman of the board (see letterheads) Ex. 6, I, 51; Ex. 199, II, 316; Ex. 200, II, 318).
Group 20.	
1. Great American Insurance Company 2. American Alliance Insurance Company 3. County Fire Insurance Company 4. Detroit Fire and Marine Insurance Company 5. Massachusetts Fire and Marine Insurance Company	(2) William H. Koop (Warner, III, 369, 361; Haid, II, 394). (3) Charles R. Street (Warner, III, 361, 369; Haid, II, 394).
Group 23.	
1. The Home Insurance Company 2. City of New York Insurance Company 3. Franklin Fire Insurance Company 4. National Liberty Insurance Company of America.	(4) Wilfred Kurth (Warner, III, 369, 361; Haid, II, 394).
Group 43.	
1. Royal Insurance Company, Ltd. 2. Federal Union Insurance Company 3. Liverpool and London and Globe Insurance Company Ltd. 4. The Newark Fire Insurance Company	(5) Harold Warner (Warner III, 361, 369; Haid, II, 394).

5. Queen Insurance Company of America
6. Star Insurance Company of America

(6) Paul L. Haid (Warner, III, 369) (President of Insurance Executives Association).

In addition to the above, Mr. Haid said that "from memory" Mr. Parsons (President of Crum and Forster: See "I. Witnesses") was present at the meeting (Haid, II, 394). Mr. Parsons said that he did not know anything about a meeting in New York in the spring of 1936. He did not attend such a meeting. He thinks he has heard of it but cannot say that he heard anything special. He heard there was a meeting but does not know anything of the details. He cannot answer from whom he heard it. He was in Florida at that time and did not get back for some time afterward. It was a pretty dead issue by that time (Parsons, III, 323). He got back from Florida about the fifth of April, 1936. He has not the faintest recollection who advised him about the meeting in New York, and he did not get the substance or the gist of what the meeting was about. He does not think Mr. Wyatt told him there had been such a meeting. He has no recollection of it. He never learned who attended the meeting (Parsons, III, 323-324). He has evidence of his being away at the time of the meeting and when he was in Florida, if the attorney is interested (Parsons, III, 325). Mr. Parsons, as President of Crum and Forster, represented the companies under the management of his corporation, namely:

Group 56.

1. British America Assurance Company.
2. North River Insurance Company.
3. United States Fire Insurance Company.
4. Westchester Fire Insurance Company.
5. Western Assurance Company.
6. United States Merchants and Shippers Insurance Company.

The people present probably represented 50 per cent of the entire interests (Warner, III, 371). Mr. Warner made no memorandum at the time and he knows of no one who did (Warner, III, 364).

Mr. Street addressed the meeting (Warner, III, 361). He was making arrangements to get this money from the companies (Haid, II, 412). He said that the trustees would now be paying out of the trustees' funds, or were about to repay, or were to make a dividend of 11 per cent (Haid, II, 394; Warner, III, 361, 369); that there were some legal expenses amounting to approximately $350,000.00 still to be paid (Warner, III, 361, 369); that he had to raise a total of approximately $450,000.00 including the $100,000.00 already collected, or approximately $350,000.00 more (Haid, II, 409-410); that he needed approximately an additional $350,000.00 which, with the amount advanced by certain companies the previous year, would approximate $450,000.00, or 5 per cent (Haid, II, 394; Warner, III, 369); that he would ask the companies to, or would they please, send him back a check for 5 per cent when they received the 11 per cent check (Warner, III, 361, 369); that the checks would be ready in a short time and they would go out. He asked them to give back to him an amount equalling 5 per cent of their impounded premiums less previous credits if there were credits (Haid, II, 394-395). He said that they were getting 11 per cent and he wanted 5 per cent for legal expense (Warner, III, 362). He stated that all of this money was for legal expenses (Haid, II, 395). He did not say he needed the money for legal fees in connection with the compromise, but in connection with the Missouri litigation (Haid, II, 395). Nothing further was discussed than that he was paying out 11 per cent and wanted back 5 per cent because he was paying out $350,000.00 in legal expenses (Warner, III, 371) and that the additional sum was for legal expenses in connection with the Missouri litigation (Haid, II, 411).

There was a question asked as to whether any additional funds would be needed (Haid, II, 410). Somebody asked him if that was all of the expenses, or whether any more money would be needed, and Mr. Street replied that he could not say whether or not that was the total expense; that he did not know what the total expense was going to be, but that that was as near as he could estimate it at the time (Warner, III, 369; Haid, II, 395).

Witness believes that Mr. Street made some reference to, or that there was some inference that there would be, some reductions or change in rates and possibly a change or broadening in forms (Warner, III, 353, 361),

but witness cannot state at which of the two meetings that was (Warner, III, 361).

Mr. Street said that when the litigation was all finished he would make a complete accounting to all companies for the sums received (Haid, II, 395). He very definitely gave assurance that they would get a complete accounting. Witness thinks that was mentioned. That is what he counted on; that it would be explained (Warner, III, 368).

Mr. Haid had never heard of Mr. Street having stated that additional sums would be needed, nor of his desire to raise additional funds until that meeting (Haid, II, 410, 411). It was news to Mr. Haid when it happened (Haid, II, 410).

Mr. Street was not, at that time, asking four or five to advance for the companies, and he was not asking consent to do it like he did before. He was just making statements (Warner, III, 369). Mr. Haid does not know why the meeting was held in his office to get the approval of this group of five men before actually going ahead with the remittance of the 11 per cent and the assessment of the 5 per cent (Haid, II, 403). Witness assumes that Mr. Street wanted their approval or their acquiescence in contributing the additional money. There could have been no other reason for the meeting, because that and the distribution of the 11 per cent is all that Mr. Street took up with them (Haid, II, 410).

Witness assumes that the effect of it was that Mr. Street, instead of Mr. Street and Mr. Folonie, disbursed the $350,000.00 as legal expense, because Mr. Street told them it was legal expense. Witness guesses that Mr. Street got the companies to let him disburse it instead of having it disbursed by himself and Mr. Folonie under the trust agreement (Haid, II, 413-414). They got the money out of the trust fund and into the hands of the companies, and then asked the companies for the money (Haid, II, 413). Mr. Haid knew Mr. Street had the 30 per cent of the impoundings in his hands in a fund which would amount to a good deal of money. Mr. Haid might not have had it in his mind that there was $2,700,000.00, but he had it in his mind that Mr. Street wanted to get it from the companies themselves. That did not arouse a single inquiry in witness' hearing. It just went off like a routine piece of business (Haid, II, 412-413).

A decree had already been rendered which seemed to take care of every possible expense, and when Mr. Street said, "Give me $350,000.00 more," nobody raised a word that witness recalls. The $350,000.00 came out of the fund arranged to take care of expenses, but it obviously was not $350,000.00 mentioned in the decree (Haid, II, 411-412).

Mr. Warner knew that the 30 per cent fund was in the hands of the trustees charged with the payment of the legal expenses (Warner, III, 362). He knew that 30 per cent of $9,000,000.00, about $2,700,000.00 had been set aside for expenses, and that the 11 per cent dividend was coming out of the 30 per cent. So he knew that funds above the legal expenses were included in the 30 per cent (Warner, III, 362). He never stopped to make any calculation at all as to whether they had more than sufficient to pay the legal expenses. He knows they did now. He did not even think about, but he knew it (Warner, III, 362). It was a $9,000,000.00 lawsuit and Mr. Warner knew that 30 per cent of that was around $2,700,000.00 (Warner, III, 362). Mr. Warner did not stop to think anything at all about whether the 5 per cent was for some purpose not set out under the decree. He did as he was asked (Warner, III, 362-363). Nobody that Mr. Warner can recall mentioned the terms of the decree in that regard (Warner, III, 370). No one, to Mr. Haid's knowledge, asked Mr. Street why it was that, after the compromise, he needed $350,000.00 more, or why he did not pay it out of the fund that had been designated for that purpose. The meeting was after the federal court decree had been entered (Haid, II, 395-396). Mr. Haid knew that Mr. Street had 30 per cent of the impoundings in a fund to pay expenses, and when he asked for $300,000.00 more it did not occur to Mr. Haid that the fund had been exhausted, and he believed that the $350,000.00 was in the fund. But no one that Mr. Haid knows of, and certainly no one in his hearing, asked Mr. Street why he did not take it out of the fund (Haid, II, 396). It did not occur to Mr. Haid at that time that in the ordinary course any legal expenses should have been paid out of money that was specifically set aside for that purpose, and no other person, to Mr. Haid's recollection, expressed that idea or thought (Haid, II, 395). No surprise was expressed that this was needed, as witness recalls. There was acquiescence (Haid, II, 410).

No detail was discussed (Warner, III, 371). It is pretty difficult to recall the details. Witness thinks he has stated all, in substance, that Mr. Street said (Warner, III, 370, 361). Witness thinks they sort of chatted in the general passing of the day, etc. (Warner, III, 370). No one made inquiry to get further enlightment on the matter (Warner, III, 362). Nobody asked any questions at all (Warner, III, 369). Nobody asked an explanation of it that witness recalls (Haid, II, 410). Witness does not recall any discussion (Haid, II, 410). He does not recall that he asked Mr. Street why he wanted to do it that way (Haid, II, 413). Mr. Street's statement that it was for legal expenses was accepted by witness and, he assumes, by everybody else (Haid, II, 411). Mr. Warner asked no questions and Mr. Street asked no questions (Warner, III, 362). No question was asked in regard to what the money was for (Warner, III, 362). Nobody asked what the expense was going to be. He had already stated it was for legal expense (Warner, III, 369). Nobody, to witness' knowledge asked why it was necessary to raise such a huge sum (Haid, II, 410). No one asked why it was that in May, 1935, Mr. Street thought that $100,000.00 would be all that would be needed to enable him to effect the compromise (Haid, II, 395). Witness thinks there was no discussion at all with reference to the necessity of getting the money right away (Warner, III, 363). He just told them what the position was and that he wanted this (Warner, III, 371).

Witness did not get the impression that they already had some idea that there might be some request of that kind. It never occurred to witness that there was anything funny about it at all (Haid, II, 413). In no respect whatever did Mr. Street raise witness' suspicion, or say anything from which witness inferred, or from which anybody could infer, that there was anything mysterious, delicate, or secret about the transaction (Warner, III, 368). Mr. Haid thinks that if he had still been the president of the Continental and of the Fidelity Phenix, and as a result, it would make a substantial difference to his companies, and Mr. Street had made this statement, he would have said, "all right." He had implicit confidence in Mr. Street. He fought with him and all

that, but sometimes he thought maybe his judgment was better than Mr. Street's.

Q. So that at least the question of judgment of the necessity for raising $450,000.00 was involved?
A. But not his integrity (Haid, II, 411).

Witness thinks they had information at the meeting that Mr. Haid would furnish them with the correct figures. Either at the meeting, or when they were just leaving, Mr. Street asked Mr. Haid to supply the figures (Warner, III, 363).

At the meeting Mr. Haid asked Mr. Street to whom the checks were to be made payable, and he said, "Oh, make them to me as agent, or if some companies want to make them to Folonie it is all right; better make them to me as agent." Mr. Haid thinks those are almost his exact words. When some checks came in payable to R. J. Folonie they did not question them; they sent them right on to Mr. Street (Haid, II, 414).

The 1936 meeting with the five executives was some week or ten days, something like that, before Mr. Haid actually collected the checks (Haid, II, 409).

B.

COLLECTION OF THE ASSESSMENT.

About the close of the meeting in 1936, Mr. Street asked Mr. Haid if he would help make distribution and secure these 5 per cent checks. Mr. Haid said he would have to have the necessary information. Mr. Haid made the offer to help Mr. Street collect right at the 1936 meeting. Mr. Haid had no list of these previous contributions or anything else, and in substance he said to Mr. Street that if Mr. Street would send him a list of companies interested, their total impoundings, and the 11 per cent checks to the companies, he would endeavor to get the 5 per cent checks for Mr. Street. The checks for certain companies in the East came along in from less than a week to ten days, with the list (Exhibit 205, II, 362-364), and a list of the companies that had

previously made a contribution in 1935. Until then, Mr. Haid had never seen a list of the Hartford companies. He has no idea where the list of companies is that Mr. Street sent in connection with Exhibit 205. He guesses it is gone (Haid, II, 399-400). Defendant's Exhibit 205 came to Mr. Haid from Mr. Street (Erskine, II, 361). Mr. Haid called witness into his office and had a pile of checks on his desk which represented an 11 per cent payment to various companies. He also had a lengthy list of those companies with the amounts of refunds opposite the companies. Mr. Haid stated that he was called upon to make this distribution; that Mr. Street had requested his services in making it. They looked over the list which, witness would say, covered a page and a half of legal size paper (Erskine, II, 350-351).

Defendant's Exhibit 205 (II, 362-364) is as follows:

MISSOURI UNEARNED PREMIUMS

OCTOBER 31.1935.

SUIT NUMBER	COMPANY	AMOUNT	66
270	American Insurance Co.	$177,898.21	10,673.89
271	Agricultural Ins.Co.	40,817.91	2,449.07
272	Aetna Insurance Co.	216,548.93	12,992.94
273	Alliance Insurance Co.	23,546.61	1,392.92
274	American Alliance Ins.Co.	79,881.29	4,792.88
275	American Central Ins.Co.	151,771.51	9,106.29
276	American Eagle Fire	47,205.52	2,832.33
277	American Union	25,148.39	1,508.86
278	Atlas Assurance Co.	43,181.47	2,591.01
279	Automobile Ins.Co.	106,758.42	6,381.51
280	Bankers & Shippers	41,219.47	2,473.17
281	Boston Insurance Co.	102,011.03	6,300.66
282	British American Assur.Co.	10,843.79	650.63
283	Caledonian Ins.Co.	9,510.15	594.61
284	California Ins.Co.	19,563.29	1,173.80
285	Camden Fire Ins.Co.	46,031.80	2,761.91
286	Chicago Fire & Marine	10,343.90	620.63
287	Citizens Insurance Co.	52,243.91	3,314.63
288	City of New York Ins.Co.	53,424.03	3,205.44
289	Columbia Insurance Co.	3,801.89	228.11
290	Columbia Fire Ins.Co.	15,482.40	928.94
291	Commerce Ins.Co.	7,730.55	463.83
292	Commercial Union Assur.Co.	67,864.87	4,071.89
293	Commercial Union Fire	27,693.88	1,661.63
294	Concordia Fire	57,164.80	3,429.89
295	Connecticut Fire	100,235.62	6,014.14
296	Continental Ins.Co.	286,528.44	17,191.71
297	County Fire Ins.Co.	5,190.77	311.45
298	Detroit Fire & Marine	17,948.57	1,076.91
299	Dubuque Fire & Marine	53,190.65	3,191.40
300	Eagle Fire Ins.Co.of N.Y.	17,951.97	1,075.92
301	Eagle Star & Brit.Dom.	20,571.54	1,234.29
302	East & West Ins.Co.	26,051.21	1,563.07
303	Equitable Fire & Marine	35,725.19	2,143.27
304	Federal Union Ins.Co.	12,876.29	772.58
305	Fidelity-Phenix Fire	336,671.80	20,201.51
306	Fire Ass'n.of Phila.	77,097.25	4,625.84
307	Firemen's Fund Ins.Co.	114,784.23	6,887.05
308	Firemen's Ins.Co.	120,247.98	7,214.88
309	First American Fire	26,070.88	1,564.25
310	Franklin Fire Ins.Co.	161,292.23	9,677.53
311	Franklin National	18,967.58	1,138.05
312	Girard Fire & Marine	36,404.96	2,184.30
313	Glen Falls Ins.Co.	49,817.05	2,989.02
314	Globe & Rutgers Fire	57,056.22	3,423.37
315	Granite State Fire	16,359.30	981.56
316	Great American Ins.Co.	219,232.70	13,153.96
317	Guaranty Fire Ins.Co.	5,806.88	348.41
318	Hanover Fire Ins.Co.	82,129.66	4,929.71
319	Hartford Fire Ins.Co.	476,581.87	28,594.91
320	Home Insurance Co.	658,[illegible].75	39,[illegible].86
321	Home Fire & Marine	25,[illegible].57	1,511.07
322	Hudson Insurance Co.	12,113.37	726.80
323	Imperial Assurance Co.	21,370.09	1,276.21
324	Importers & Exporters	49,[illegible].05	2,[illegible].70
325	Ins.Co.of North America	178,067.72	10,684.06
326	Ins.Co.of State of Pa.	37,533.74	2,252.02
327	Law,Union & Rock Ins.Co.	24,158.68	1,449.16
328	Liverpool,London & Globe	172,944.26	10,376.66
329	London Assurance Corp.	49,[illegible].48	3,[illegible].77
330	London & Lancashire	72,[illegible].09	4,303.07
341	London & Provincial Marine & General Ins.Co.	9,653.79	579.23
342	London & Scottish Assur.Corp.	13,466.99	808.00

- 2 -

POLICY NUMBER	COMPANY	AMOUNT	6%
	Lumbermen's Ins.Co.	$38,175.01	$ 1,928.10
	Manhattan Fire & Marine	5,533.20	296.03
	Massachusetts Fire & Marine	5,[illegible]	[illegible]
	Mechanics Insurance Co.	[illegible]	[illegible]
	Merchants Ins.Co.	20,218.04	1,213.68
	Merchants Fire Assur.Corp.	40,292.86	3,615.28
	Merchants Fire Ins.Co.	12,[illegible]	722.90
	Mercury Insurance Co.	26,807.44	1,596.45
	Michigan Fire & Marine	15,[illegible]	920.04
	Milwaukee Mechanics	67,[illegible]	4,065.27
	Nat'l.Ben Franklin Fire	27,[illegible]	1,631.92
	National Fire Ins.Co.	30,912.43	18,[illegible]
	National Liberty Ins.Co.	9,807.70	5,112.46
	National Reserve Ins.Co.	13,[illegible]	811.28
	National Security Fire	11,[illegible]	662.63
	National Union Fire	80,[illegible]	4,822.80
	Newark Fire Ins.Co.	28,[illegible]	1,711.30
	New England Fire Ins.Co.	15,[illegible]	[illegible]
	New Hampshire Fire	76,[illegible]	4,601.65
	New Jersey Ins.Co.	28,[illegible]	1,682.74
	N.Y.Underwriters Ins.Co.	150,931.76	9,[illegible]
	Niagara Fire Ins.Co.	38,[illegible]	2,[illegible]
	Northern Assurance Co.	38,[illegible]	2,[illegible]
	Northern Insurance Co.	72,[illegible]	4,[illegible]
	North River Ins.Co.	67,320.42	4,[illegible]
	Northwestern Fire & Marine	12,107.78	[illegible]
	Norwich Union Fire	44,027.49	2,641.65
	Old Colony Ins.Co.	16,932.00	1,015.92
	Orient Insurance Co.	70,[illegible]	4,207.49
	Pacific Fire Ins.Co.	32,043.43	1,922.61
	Palatine Insurance Co.	53,383.92	2,003.04
	Patriotic Insurance Co.	[illegible]	[illegible]
	Philadelphia Fire & Marine	51,064.11	3,063.85
	Phoenix Assurance Co.	77,201.92	4,638.24
	Phoenix Insurance Co.	120,532.83	7,231.97
	Central States Fire	33,593.96	2,015.63
	Minneapolis Fire & Marine	25,[illegible]	1,[illegible]
	Presidental Fire & Marine	[illegible]	[illegible]
	Providence Washington	45,[illegible]	2,694.07
	Provident Fire Ins.Co.	[illegible]	462.22
	Queen Insurance Co.	108,977.62	6,176.26
	Reliance Ins.Co.	30,913.67	1,[illegible]
	Rhode Island Ins.Co.	52,861.55	3,[illegible]
	Royal Exchange Assurance	109,699.60	6,[illegible]
	Royal Insurance Co.	97,277.48	5,[illegible]
	Safeguard Insurance Co.	[illegible]	[illegible]
	St.Paul Fire & Marine	[illegible]	4,[illegible]
	Scottish Union & National	[illegible]	[illegible]
	Security Insurance Co.	[illegible]	[illegible]
	Sentinel Fire Ins.Co.	[illegible]	[illegible]
	Springfield Fire & Marine	[illegible]	15,[illegible]
	Standard Fire Ins.Co.	[illegible]	[illegible]
	Stanchard Fire Ins.Co.	57,820.57	[illegible]
	Star Insurance Co.	[illegible]	[illegible]
	State Assurance Co.	[illegible]	[illegible]
	Stuyvesant Ins.Co.	10,[illegible]	[illegible]
	Sun Insurance Office	[illegible]	1,[illegible]
	Superior Fire Ins.Co.	[illegible]	4,[illegible]
	Svea Fire & Life Ins.Co.	[illegible]	1,[illegible]
	Tokio Marine & Fire	[illegible]	[illegible]
	Transcontinental Ins.Co.	[illegible]	2,[illegible]
	Travelers Fire Ins.Co.	[illegible]	[illegible]
	Twin City Fire Ins.Co.	[illegible]	10,[illegible]
	Union Assurance Society	[illegible]	[illegible]
	Union Fire Ins.Co.	[illegible]	[illegible]
	United Firemen's Ins.Co.	[illegible]	[illegible]
	United States Fire Ins.Co.	[illegible]	9,119.66

-3-

UNIT NUMBER	COMPANY	AMOUNT	6%
416	U.S.Merchants & Shippers	$ 4,373.96	$ 902.82
418	Victory Insurance Co.	12,622.45	757.35
419	Westchester Fire Ins.Co.	71,346.10	4,280.76
420	Western Assurance Co.	18,511.32	1,110.68
421	Western Fire Ins.Co.	33,932.74	2,035.96
422	World Fire and Marine	23,890.13	1,367.41
423	Yorkshire Insurance Co.	39,458.64	2,367.52
425	Mechanics & Traders	32,897.51	1,973.85
426	Potomac Insurance Co.	50,014.84	2,940.88
901	Underwriters Grain Ass'n	41,419.67	2,485.18
902	Pittsburgh Underwriters	2,998.69	179.92
		$9,080,279.01	$541,216.67

4510 1308

the first column is the total impounded premiums up to May first (Erskine, II, 361).

There are two notations on the corner of this exhibit as follows:

> "R. J. F., checks drawn 3/9/36, 6% distribution C. R. S." and "of Impounded as of May 1."

Mr. Haid saw this notation, but he did not know what it meant. He never knew what the column headed "6%" was for. He did not ask for it, but that is the document that came (Haid, II, 401).

They then grouped the companies so that when they went to a man they would call for every company he represented. Mr. Erskine would say that this was at Mr. Haid's suggestion (Erskine, II, 351). Defendant's Exhibit 206 (II, 366-370) was made up in Mr. Haid's office. It does not contain the list of those who had made the initial contributions. The only record witness had of those who made contributions was the list that came with Defendant's Exhibit 205 when Mr. Street sent it to him. Mr. Erskine made up the list, Exhibit 206, or caused it to be made up. Mr. Haid then made calculations and memoranda for each one of the groups, deducting the amount of the previous contribution from the 5 per cent assessment. Mr. Haid believes that three copies of the list were made. He clipped them off or had them clipped off on a piece of paper as to each group, and as the checks went out there was either a personal written memorandum by witness showing the calculations, or if the companies had not made a contribution, showing the amount of their impoundings and the amount of the 5 per cent. That is probably why the list is not here (Haid, II, 400-401).

Defendant's Exhibit 206 (II, 366-370) is a document prepared by Mr. Erskine, based upon the list, Defendant's Exhibit 205. In this list Mr. Erskine undertook to set out the 11 per cent premiums, the total impounded premiums, and the 5 per cent asked of the companies (Erskine, II, 365). The grouping of the companies showed the 11 per cent of the impounded premiums and also the 5 per cent thereof (Erskine, II, 351).

The credits for advances made the previous year, if any, do not appear on Exhibit 206. Mr. Erskine believes that a copy of such a list was sent to Mr. Street

and Mr. Haid used another copy (Erskine, II, 372). Mr. Haid did not give Mr. Erskine a list of the companies that made contributions in 1935 (Erskine, II, 351). When an involved company made a payment, Mr. Haid tore off that section pretaining to that particular company and attached a memorandum to it indicating the advance payments that had been made which was given to those companies that had made such payments (Erskine, II, 372, 352). The list was made first, and then the question of credits was worked out afterwards. Mr. Erskine did not make a new chart after the matter of credit was allowed. He had no memorandum showing where these credits were given to these companies where the advances were made (Erskine, II, 373). That was the first time that Mr. Erskine knew of the previous payments which these companies had made, which payments, he was told, were for legal expenses (Erskine, II, 352).

Defendant's Exhibit 206 (II, 366-370) purports to be a list of all of the 137 companies whose suits are now pending, arranged by groups in the first column. The second column, under the heading "11% payment" shows the amount of the 11 per cent dividend in 1936 as to each company, the third column shows the amount of such dividend to each group (being the sum of all the amounts in the second column as to every company in the group, the fourth column gives the amount of the impounded premiums for each company, the fifth column gives the amount impounded premiums for each group, and the sixth column gives the amount of 5 per cent of the impounded premiums for each group.

In March, 1936, Mr. Erskine called upon a number of the officers (Erskine, II, 350). Mr. Haid asked Mr. Erskine to call on the various groups and gave him to understand that Mr. Street had requested the services of his office to make this distribution, and at the same time to collect the 5 per cent of their impounded premiums from the companies receiving the 11 per cent checks. Mr. Erskine thinks he asked Mr. Haid how the amount was to be charged by the companies and Mr. Haid's reply was that it was for legal expenses in connection with the Missouri rate settlement. Those were the general instructions Mr. Haid gave Mr. Erskine (Erskine, II, 351).

Mr. Erskine had the 11 per cent checks in his possession which are listed in Defendant's Exhibit 206 (Erskine, II, 371).

Mr. Erskine may have called upon 15 or 18 of the local offices and was in telephone communication with a few out of town offices. Some of those out of town offices with whom he communicated were the Glens Falls, the Agricultural of Watertown, New York, the Boston, and the Springfield. He does not recall whether he communicated with the New Hampshire. He did not communicate with Camden, or with any company in Philadelphia (Erskine, II, 352).

He thinks the reason he did not write letters was, primarily, because the element of time seemed to be involved in the matter. He probably took more time in preparing this list than perhaps seemed necessary. He might have been two or three days preparing the list. It was a considerable job. Some of the companies had gone out of existence, and one or two others had been merged. Preparing it required some care and witness has a distinct recollection that Mr. Haid pressed him on this job before he had finished the list. He does not recall whether Mr. Haid told him that Mr. Street was in a hurry for the fund, but he distinctly gathered that impression (Erskine, II, 352-353).

Mr. Erskine thinks that he recalls that his telephone conversations were pretty much of a pattern. He repeated just about the information that Mr. Haid had given him —that Mr. Street had requested the services of his office in making this distribution and collection; that they were mailing the person he was addressing a check that evening which amounted to 11 per cent of the impounded premiums, and Mr. Erskine requested in return that his check be made out to Mr. C. R. Street, Agent, for 5 per cent of the impounded premiums. Mr. Erskine also told each individual whom he called in his own city substantially that. Some of the conversations were naturally amplified into personal conversations (Erskine, II, 353). In the telephone and personal calls conversation would naturally vary (Erskine, II, 353). Mr. Erskine did not go out and visit any companies whose offices were not in New York. He believes that Mr. Haid did (Erskine, II, 353).

Mr. Erskine would say that in nearly every instance he mentioned that it was for legal expenses. He did

not tell any of them what particular legal expense it was for. He did not know anything about what legal expense it was (Erskine, II, 354). He knew that there was the 50 per cent, 30 per cent and 20 per cent allocation, and understood that the 30 per cent was for legal expenses. He was asking for checks for 5 per cent for more legal expenses. He did not ask Mr. Haid to explain it to him so that he could answer the inquiries of those who might inquire of him. He got no explanation from Mr. Haid, and therefore he had none that he could give to the man interviewed, except for legal expense, and that was all he told him (Erskine, II, 354).

Mr. Erskine has no recollection of following up with the persons or companies interviewed with a letter of confirmation of any kind. His entire contact ended with the telephone conversations or personal interviews (Erskine, II, 355).

Mr. Haid would say that maybe two days and a half of his time were required in effecting the distribution of the checks and of procuring the 5 per cent checks (Haid, II, 402). Mr. Haid did not go out and get any of these checks (Haid, II, 392). He went to Philadelphia (Haid, II, 402). He thinks he called on three offices. He cannot now think of any other business that he had in Philadelphia on that occasion. He went to no other cities or towns but made personal calls on quite a number of companies in the city of New York and he sent memoranda to some that he did not call on (Haid, II, 402-403). That is the only trip out of town in connection with it that he recalls. He would not have gone to Philadelphia unless he had some other business, because there was no point in doing it. He could have done it over the telephone just as easily as he did at Hartford (Haid, II, 402).

Mr. Clark assisted Mr. Street in gathering up some of the 5 per cent attorneys' fees. It came about thus. Mr. Street came into Mr. Clark's office to ask for these checks, and stated that the Dubuque Fire and Marine Insurance Company, which was the only bureau company in the litigation besides Mr. Clark's companies, would also be called upon to contribute. Mr. Street asked Mr. Clark if, as a member of the committee representing the bureau, he would take it up with Mr. Weiser and assist in getting the checks. Mr. Clark said he would. Mr. Street asked Mr. Clark to call Mr. Weiser on the tele-

phone. Mr. Clark does not know what the urgency might have been, but he did as Mr. Street requested him to do.

"Of course, there was no record made of that telephone conversation?

Well, yes—I sent him a memorandum after I telephoned Mr. Weiser.

You put your own confirmation on what you said? That is right" (H. Clark, I, 277-278).

The checks by which the companies paid the general assessment of 5 per cent of their impounded premiums are in evidence. They are as follows:

Deft's. Exhibit No.	Transcript	Date	Company Issuing Check	Group	Payee	Amount
162	II, 138	3/21/36	The American Insurance Company	1	C. R. Street	$ 9,719.03
322	III, 343	3/23/36	Aetna Insurance Company	2	C. R. Street, Agent	6,991.95
143	II, 56	3/21/36	Agricultural Insurance Company	3	C. R. Street, Agent	2,049.89
120a	III, 433	3/23/36	Atlas Assurance Company, Limited	4	C. R. Street, Agent	2,159.17
278 278b	III, 137	3/24/36	The Automobile Insurance Company of Hartford, Connecticut	5	C. R. Street, Agent	3,158.48
298	III, 201	3/24/36	Bankers & Shippers Insurance Company of New York	6	R. J. Folonie, Agent	2,060.97
148 147	II, 80 II, 79	3/24/36	Pacific Fire Insurance Co.	6	R. J. Folonie, Agent	1,602.17
297 149	III, 200 II, 81	3/24/36	New Jersey Insurance Company — General Account	6	R. J. Folonie, Agent	1,402.27
299 228a	III, 202 III, 435	3/21/36	Boston Insurance Company	7	C. R. Street, Agent	6,097.15
215	II, 431	11/25/36	Caledonian Insurance Company of Scotland	8	C. R. Street	495.50
273	III, 114	3/23/36	Camden Fire Insurance Association	9	C. R. Street, Agent	2,301.59
197	II, 301	4/15/36	Lincoln Fire Insurance Co. of New York	10	C. R. Street, Agent	694.52
110	I, 521	3/21/36	Commercial Union Assurance Company, Ltd.	11	C. R. Street, Agent	8,281.67
327	III, 410	3/21/36	Continental Insurance Company	12	C. R. Street, Agent	22,323.12

Deft's. Exhibit No.	Transcript	Date	Company Issuing Check	Group	Payee	Amount
46	I, 223	3/25/36	Dubuque Fire & Marine Insurance Co.	13	C. R. Street, Agent	2,910.02
47	I, 224	3/25/36	National Reserve Insurance Company	13	C. R. Street, Agent	676.06
157	II, 109	3/24/36	The Eagle, Star & British Dominions Insurance Company Limited of London, England	14	C. R. Street, Agent	1,028.57
31a	III, 423	4/29/36	Fire Association of Philadelphia	15	C. R. Street	2,929.90
31b	III, 424	4/29/36	Lumberman's Insurance Company	15	C. R. Street	1,221.22
31c	III, 425	4/29/36	Reliance Insurance Company of Philadelphia	15	C. R. Street	794.78
31d	III, 426	4/29/36	Reliance Insurance Company of Philadelphia (For Victory Insurance Company)	15	C. R. Street	479.69
28a	III, 436	3/13/36	Fire Association of Philadelphia	15	C. R. Street	1,712.82
50	I, 247	3/27/36	Home Fire and Marine Insurance Company	16	C. R. Street. Agent	1,259.22
51	I, 248	3/27/36	Fireman's Fund Insurance Company	16	C. R. Street, Agent	5,739.21
55	I, 268	3/25/36	The Concordia Fire Insurance Company of Milwaukee	17	C. R. Street, Agent	2,858.24
56	I, 269	3/25/36	Firemen's Insurance Company of Newark, New Jersey	17	C. R. Street, Agent	6,162.33
57	I, 270	3/25/36	The Girard Fire and Marine Insurance Company	17	C. R. Street, Agent	1,820.25
58	I, 271	3/25/36	The Mechanics Insurance Company of Philadelphia	17	C. R. Street, Agent	387.17
59	I, 272	3/25/36	Milwaukee Mechanics' Insurance Company	17	C. R. Street Agent	3,387.72
60	I, 273	3/25/36	National-Ben Franklin Insurance Company of Pittsburgh, Pa.	17	C. R. Street, Agent	1,359.93
61	I, 274	3/25/36	Superior Fire Insurance Company	17	C. R. Street, Agent	1,015.21
140	II, 42	3/20/36	Glens Falls Insurance Company	18	C. R. Street, Agent	2,877.38
101	I, 460	3/23/36	General Account Globe and Rutgers Fire Insurance Company	19	C. R. Street, Agent	2,852.81
85	I, 404	3/25/36	Great American Insurance Company	20	C. R. Street, Agent	5,997.00
43	I, 209	3/19/36	Detroit Fire & Marine Insurance Co.	20	C. R. Street, Agent	897.43

Deft's. Exhibit No.	Transcript	Date	Company Issuing Check	Group	Payee	Amount
121	II, 11	3/23/36	The Hanover Fire Insurance Company	21	R. J. Folonie, Agent	4,116.48
253	III, 42	3/24/36	Hartford Fire Insurance Co.	22	C. R. Street, Agent	25,285.99
95	I, 430	3/23/36	The Home Insurance Company Special A/C #3	23	C. R. Street, Agent	28,682.14
95a	III, 434	3/23/36	National Liberty Insurance Company of America Special A/C #3	23	C. R. Street, Agent	4,260.39
156	II, 103	3/25/36	The Importers and Exporters Insurance Company	24	C. R. Street, Agent	2,482.25
191	II, 283	3/24/36	Insurance Company of North America	25	C. R. Street, Agt.	8,903.39
191a	III, 427	3/24/36	The Alliance Insurance Company of Philadelphia	25	C. R. Street, Agt.	1,077.43
191b	III, 428	3/24/36	National Security Fire Insurance Company	25	C. R. Street, Agt.	552.19
191c	III, 429	3/24/36	Philadelphia Fire & Marine Insurance Company	25	C. R. Street, Agt.	2,553.21
182	II, 229	3/24/36	The Insurance Company of the State of Pennsylvania	26	C. R. Street, Agent	1,876.68
160	II, 128	3/23/36	The London Assurance	27	Charles R. Street, Agent	3,493.96
Stip.	III, 536	4/2/36	The Union Fire Insurance Company	27	Charles R. Street, Agent	793.63
66	I, 323	3/24/36	The London and Lancashire Ins. Co., Ltd.	28	C. R. Street, Agent	3,752.55
67	I, 324	3/24/36	Orient Insurance Company	28	C. R. Street, Agent	3,506.24
68	I, 325	3/24/36	Safeguard Insurance Company	28	C. R. Street, Agent	495.38
69	I, 326	3/24/36	Law, Union & Rock Insurance Co., Limited	28	C. R. Street, Agent	1,307.63
74	I, 381	3/25/36	Merchants Fire Assurance Corporation of New York	29	C. R. Street, Agent	3,012.99
308	III, 300	4/8/36	The Merchants Fire Insurance Company	30	C. R. Street, Agent	669.40
34	I, 149	3/27/36	National Fire Insurance Co. of Hartford	31	C. R. Street, Agent	13,655.11
186	II, 246	3/23/36	National Union Fire Insurance Company	32	C. R. Street, Agent	4,019.00
274	III, 121	3/21/36	New Hampshire Fire Insurance Co.	33	C. R. Street, Agent	4,652.18
71	I, 360	3/23/36	Northern Assurance Company Ltd. of London	34	C. R. Street, Agent	4,910.48

Deft's. Exhibit No.	Transcript	Date	Company Issuing Check	Group	Payee	Amount
164	II, 148	3/23/36	Northern Insurance Company of New York	35	C. R. Street, Agent	3,639.20
194	II, 293	3/23/36	Norwich Union Fire Insurance Society Limited	36	C. R. Street, Agent	2,201.37
196	II, 295	3/23/36	The Eagle Fire Insurance Company of New York	36	C. R. Street, Agent	896.60
175	II, 202	3/23/36	Phoenix Assurance Co. Ltd. of London	37	C. R. Street, Agent	5,226.18
117	I, 533	3/24/36	The Potomac Insurance Company of the District of Columbia	38	C. R. Street, Agent	2,450.74
233	II, 521	3/24/36	Providence Washington Insurance Company	39	C. R. Street, Agent	2,186.72
Stip.	III, 536	3/23/36	The Phoenix Insurance Company	40	C. R. Street, Agent	9,132.73
241	III, 4	3/26/36	Rhode Island Insurance Company	41	C. R. Street, Agent	2,938.42
242	III, 5	3/31/36	Merchants Insurance Co. of Providence	41	C. R. Street, Agent	1,010.90
154	II, 94	3/23/36	Royal Exchange Assurance of London, United States Branch	42	C. R. Street	6,385.31
325	III, 365	3/23/36	Royal Insurance Company Limited	43	C. R. Street, Agent	12,200.40
41b	III, 431	3/31/36	St. Paul Fire and Marine Insurance Company	44	C. R. Street, Agent	4,121.75
41a	III, 430	3/31/36	Mercury Insurance Company	44	C. R. Street, Agent	1,330.35
223	II, 474	3/27/36	Scottish Union & National Insurance Co.	45	C. R. Street, Agent	414.50
222	II, 472	3/27/36	American Union Insurance Co.	45	C. R. Street, Agent	1,257.42
12	I, 83	3/23/36	Security Insurance Company	46	C. R. Street, Agent	2,960.75
13	I, 84	3/23/36	East and West Insurance Company of New Haven	46	C. R. Street, Agent	1,302.56
239	II, 541	3/23/36	Springfield Fire & Marine Insurance Company	47	C. R. Street, Agent	15,821.52
139	II, 31	3/23/36	The Stuyvesant Insurance Company	48	C. R. Street,	1,171.41
76	I, 390	3/24/36	The Standard Fire Insurance Company of New Jersey	49	C. R. Street, Agent	2,891.02
137	II, 22	3/23/36	Patriotic Insurance Company of America	50	R. J. Folonie, Agent	249.31
300	III, 203	3/23/36	United States Branch of the Sun Insurance Office of London Limited	50	R. J. Folonie, Agent	3,591.06

Deft's. Exhibit No.	Transcript	Date	Company Issuing Check	Group	Payee	Amount
165	II, 159	4/2/36	Svea Fire & Life Insurance Co. Limited	51	C. R. Street, Agent	647.91
166	II, 160	4/2/36	Hudson Insurance Company	51	C. R. Street, Agent	615.66
172	II, 189	3/25/36	The Tokio Marine & Fire Insurance Company, Ltd.	52	C. R. Street, Agent	1,797.86
254a	III, 432	3/25/36	The Travelers Fire Insurance Company	53	C. R. Street, Agent	6,738.21
302	III, 258	4/--/36	The Western Fire Insurance Company	54	C. R. Street, Agent	1,693.63
174	II, 196	3/24/36	The Yorkshire Insurance Company, Ltd.	55	C. R. Street, Agent	2,455.62
170	II, 170	3/21/36	Crum & Forster	56	C. R. Street, Agent	6,419.41
64	I, 310	3/18/36	Underwriters Grain Association	57	C. R. Street, Agent	2,070.98
					Total:	$347,582.64

Notations and endorsements appeared upon the checks as follows:

Deft's. Exhibit No.	Transcript	Notation on Face of Check	Group	Endorsement
162	II, 138		1	C. R. Street
322	III, 343		2	C. R. Street, Agent
143	II, 56		3	C. R. Street, Agent
120a	III, 433		4	C. R. Street, Agent
278, 278b	III, 137	"Advance Legal Expense"	5	C. R. Street, Agent
298 (148	III, 201 II, 80)		6	Pay to the order of C. R. Street, R. J. Folonie, Agent For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street
297 (147	III, 200 II, 79)		6	Pay to the order of C. R. Street, R. J. Folonie, Agent For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street
149 (299	II, 81 III, 202)		6	"
228a	III, 435	"On a/c legal expense Missouri Impounded Premium rate case Boston and Old Colony Insurance Companies"	7	The payee by endorsement below acknowledges receipt of payment as indicated on the face of this check. C. R. Street, Agent

Deft's. Exhibit No.	Transcript	Notation on Face of Check		Group	Endorsement
215	II, 431			8	For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street
273	III, 114	"In payment of Legal Expense in connection with Missouri impounded premiums"		9	C. R. Street, Agent
197	II, 301	Re: Mo. impounded prems. –Services & Legal Expense Presidential 177.33 Chicago F & M 517.19	694.52	10	C. R. Street, Agent
110	I, 521			11	C. R. Street, Agent
327	III, 410			12	C. R. Street, Agent
46	I, 223	"Acc't of attorney fees & expenses."		13	C. R. Street, Agent
47	I, 224	"Acc't of attorney fees & expenses."		13	C. R. Street, Agent
157	II, 109	In full settlement of voucher 22653		14	C. R. Street, Agent
31a	III, 423	(Contra)		15	For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street
31b	III, 424	(Contra) 1221.22		15	"
31c	III, 425	Contra (Reliance) 794.78		15	"
31d	III, 426	(Contra Victory)	479.69	15	"
28a	III, 436	"Legal Expense"	1712.82	15	C. R. Street For deposit with City National Bank and Trust Company of Chicago, C. R. Street, Agt.
50	I, 247			16	C. R. Street, Agent
51	I, 248			16	C. R. Street, Agent
55	I, 268			17	"Payment on account Attorney fees & expenses 2858.24 C. R. Street, Agent"
56	I, 269			17	"Payment on account Attorney fees & expenses 6162.33 C. R. Street, Agent"
57	I, 270			17	"Payment on account Attorney fees & expenses 1820.25 C. R. Street, Agent"
58	I, 271			17	"Payment on account Attorney fees & expenses 387.17 C. R. Street, Agent"
59	I, 272			17	"Payment on account Attorney fees & expenses 3,387.72 C. R. Street, Agent"

Deft's. Exhibit No.	Transcript	Notation on Face of Check	Group	Endorsement
60	I, 273		17	"Payment on account Attorney fees & expenses 1,359.93 C. R. Street, Agent"
61	I, 274		17	"Payment on account Attorney fees & expenses 1,015.21 C. R. Street, Agent"
140	II, 42	"For Legal Expenses, Glens Falls & Commerce"	18	C. R. Street, Agent
101	I, 460	"As payment in full of the following items: Legal Expenses A/C Missouri Refund"	19	C. R. Street, Agent
85	I, 404		20	C. R. Street, Agent
43	I, 209	Special Account	20	C. R. Street, Agent
121	II, 11		21	"Pay to the order of C. R. Street, R. J. Folonie, Agent For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street"
253	III, 42		22	C. R. Street, Agent
95	I, 430		23	C. R. Street, Agent
95a	III, 434		23	C. R. Street, Agent
156	II, 103	"In full payment of account stated in voucher of corresponding numbers duplicate of which is rendered herewith"	24	C. R. Street, Agent
191	II, 283	"In payment of Missouri Rate Case"	25	C. R. Street, Agent
191a	III, 427	"In payment of Missouri Rate Case"	25	C. R. Street, Agent
191b	III, 428	"	25	"
191c	III, 429	"	25	"
182	II, 229	V-16026	26	"
160	II, 128	Legal Exp. Re. Mo. Impounded Prems.	27	Charles R. Street, Agent
Stip.	III, 536	"Legal exp. in connection with Missouri impounded Pms."	27	Charles R. Street, Agent
66	I, 323		28	C. R. Street, Agent
67	I, 324		28	C. R. Street, Agent
68	I, 325		28	C. R. Street, Agt.
69	I, 326		28	C. R. Street, Agent
74	I, 381		29	"Legal Expenses Re. Missouri Impounded C. R. Street, Agent"
308	III, 300		30	C. R. Street, Agent
34	I, 149		31	C. R. Street, Agent
186	II, 246	"As payment in full of the following items: 5% of Missouri Impounded Premiums as of 5/1/35"	32	C. R. Street, Agent
274	III, 121	"Legal Exp."	33	C. R. Street, Agent
71	I, 360		34	C. R. Street, Agent
164	II, 148		35	C. R. Street, Agent
194	II, 293		36	C. R. Street, Agent
196	II, 295		36	C. R. Street, Agent

Deft's. Exhibit No.	Transcript	Notation on Face of Check	Group	Endorsement
175	II, 202		37	C. R. Street, Agent
117	I, 533	In payment of General Legal Expense in connection with the Missouri Impounding.	38	C. R. Street, Agent
233	II, 521		39	C. R. Street, Agent
Stip.	III, 536	"In payment of legal expense"	40	C. R. Street, Agent
241	III, 4	"In payment in full of following items: Imp. Prems."	41	C. R. Street, Agent
242	III, 5	"As payment in full of following items: Missouri Impounded Premiums"	41	C. R. Street, Agent
154	II, 94		42	C. R. Street
325	III, 365	"In full payment of expenses Re. Missouri Rate Litigation"	43	C. R. Street, Agent
41b	III, 431	"Legal Expense — Missouri Impounded Premiums"	44	C. R. Street, Agent
41a	III, 430	"Legal Expense Re: Missouri Impounded"	44	C. R. Street, Agent
223	II, 474		45	C. R. Street, Agent
222	II, 472		45	C. R. Street, Agent
12	I, 83	"5% of Imp. Prem. to 5/1/35 2960.75"	46	C. R. Street, Agent
13	I, 84	"5% of Imp. Prem. to 5/1/35 1302.56"	46	C. R. Street, Agent
239	II, 541	"In full settlement of Missouri Rate Case"	47	C. R. Street, Agent
139	II, 31		48	Re: Missouri Impounded Expenses C. R. Street
137	II, 22	"Legal Expense"	49	C. R. Street, Agent
76	I, 390		50	" A. A. D. Expenses Missouri Litigation Pay to the order of C. R. Street, R. J. Folonie, Agent For deposit with City National Bank and Trust Company, Charles R. Street C. R. Street"
300	III, 203		50	"Received of The Sun Insurance Office Limited of London $3591.06 in payment of the following: Expense Missouri Litigation. Pay to the order of C. R. Street R. J. Folonie, Agent For deposit with City National Bank and Trust Company of Chicago Charles R. Street C. R. Street"
165	II, 159		51	C. R. Street, Agent
166	II, 160		51	C. R. Street, Agent
172	II, 189		52	C. R. Street, Agent
254a	III, 432		53	C. R. Street, Agent
302	III, 258		54	C. R. Street, Agent
174	II, 196		55	C. R. Street, Agent
170	II, 170		56	C. R. Street, Agent
64	I, 310		57	C. R. Street, Agent

EXPLANATIONS OF CHECKS.

(Note: Defendant's Exhibit 72 (I, 361), the check of London and Scottish Assurance Corporation, Ltd., for $673.33, is no part of the contribution of group 34 to the 5 per cent assessment made by Mr. Street. The entire contribution of group 34 to Mr. Street is contained in the check of Northern Assurance Company, Ltd., for $4,910.48 (Defendant's Exhibit 71, I, 360). The London and Scottish Assurance Corporation, Ltd., check, though it represents the prorata part of that corporation's contribution to the 5 per cent assessment, is merely to reimburse Northern Assurance Company, Ltd., of London which had made the contribution for both companies. Defendant's Exhibit 70 (I, 359) is a memorandum concerning a dividend check received by this group and under that statement is a computation showing that 5 per cent of the total impounded premiums for the group amounts to $4,910.48, which is the exact amount of the check of Northern Assurance Company, Ltd., dated March 23, 1936, payable to the order of C. R. Street, Agent (Defendant's Exhibit 71, I, 360). That computation also shows that the impounded premiums of "L. & S." is $13,466.59. 5 per cent of that amount is $673.33, which is the exact amount of the check of London and Scottish Assurance Corporation, Ltd., dated March 24, 1936, payable to the order of Northern Assurance Company (Defendant's Exhibit 72, I, 361)).

(Note: The check of St. Paul Fire and Marine Insurance Company for $1,483.84 (Defendant's Exhibit 39, I, 180) and the check of Mercury Insurance Company for $478.94 (Defendant's Exhibit 40, I, 181) are no part of the contribution of group 44 to the 5 per cent assessment.)

Defendant's Exhibit 35 (I, 171) is a letter dated March 9, 1936, written by C. R. Street and R. J. Folonie, trustees. It is not addressed to anyone. It is as follows;

> "We enclose check for $ (see below), being 6% of the amount of your impounded premiums in Missouri as of May 1, 1935.
>
> This is a distribution out of the 30% of the fund turned over to us as Trustees for the discharging of company liabilities in connection with this rate litigation—we think this can be done without reducing the fund below the limit of safety."

Under the signature appears the following:

"St. Paul Fire & Marine Insurance Co. $4946.14
Mercury Insurance Co. 1596.45"

Mr. Dosdall saw this letter. He received it March 13th. The two checks referred to in the note came with that letter, one to the St. Paul Company and one to the Mercury. They were in the letter, but nothing else was in the letter that Mr. Dosdall recalls. "Maybe this is part of it" (Dosdall, I, 170).

Defendant's Exhibit 36 (I, 172) is a disbursement voucher of Mercury Company dated March 31, 1936. The words spread thereon are:

"C. R. Street Agent $1,330.35
Check No. 16058 First Nat'l Bank
Account Charged
Legal Expenses—Fire"

Included in Defendant's Exhibit 36 is a slip of paper bearing the words "send me ck. for 30% and trust me. CRS."

Mr. Dosdall presumes this voucher was with the letter. The written notation is C. R. Street's own handwriting. Witness knows his handwriting and his initials (Dosdall, I, 170).

When Mr. Dosdall got the memorandum "send me ck. for 30% and trust me" (Deft's. Ex. 36, I, 172 he wrote Mr. Street a letter (Dosdall, I, 173) which is Defendant's Exhibit 37 (I, 174). The letter is dated March 13, 1936, and states:

"Dear Mr. Street:

Re: Missouri Impounded Premiums.

Enclosed are the checks asked for in the memorandum which was received, attached to your letter of the 9th."

Defendant's Exhibit 38 (I, 176) was received by this company (Dosdall, I, 175). It is a letter to Mr. McKown signed by C. R. Street. It is as follows:

"Chicago March 30, 1936.

Dear Mr. McKown:

I enclose herewith check for the Mercury, $1330.37; St. Paul, $4121.78, on account of Missouri impounded premiums.

This makes 11% of your impoundments as of May 1st last which you have received.

I also return you two checks payable to me and to Folonie as trustees.

The situation has changed since I spoke to you, and have been to New York where a number of the 'big boys' met and I came back with Home check for $34,000 (they had previously put up $15,000), Continental, $23,000 (they had previously put up $15,000), and others, all *payable to C. R. Street, Agent.*

Please send me *Mercury check for $1330.35* and St. Paul *check for $4121.75 expense,* this being within a few cents of the same amounts as the checks now sent you.

All checks are in except these and two distant companies I have yet been unable to reach.

This simply increases the amount you will receive in the final distribution, a matter of bookkeeping, as it were, but it cannot be paid out of the Trustees' account—no bribery but legitimate expenses which we cannot put in our report to the court.

Full report will be made at the April meeting."

The checks mentioned in the letter of March, 1936, were 6 per cent of the amount of "our" impounded premium in Missouri as of May 1st, 1935. Witness' recollection is that there was some slight difference. Witness understood by the last paragraph that that was the 30 per cent that would be used for litigation and expenses, and that at least 6 per cent would not be needed for litigation expenses and they were paying it to the company (Dosdall, I, 177).

Witness interpreted the statement: "send me ck. for 30% and trust me" just as it reads, 30 per cent of those amounts shown at the bottom of the letter dated

March 9th. The pencil figures are "our cashier's extension" (Dosdall, I, 178).

Witness wrote the letter of March 13th (Exhibit 37, I, 174) to Mr. Street and enclosed checks for $1,483.00 and $478.94, which was 30 per cent of those amounts specified in the bottom of that letter, in other words, it was 30 per cent of the 6 per cent checks. That is the way he interpreted it and that is the way he did (Dosdall, I, 178).

Defendant's Exhibits 39 and 40 (I, 180-181) are both marked "cancelled." These two checks were the checks sent in the letter of March 13th (Dosdall, I, 178).

These two checks were the ones referred to in the letter (Exhibit 38) by the words "I also return you two checks payable to me and to Folonie as trustees" (Dosdall, I, 182).

When Mr. Street returned the two checks marked Exhibits 39 and 40, payable to Street and Folonie as trustees, Mr. Dosdall voided those checks, because Mr. Street sent those checks back and asked for new checks. He enclosed those other checks, also returned two checks "payable to me and Folonie as trustees," the two voided checks, and witness voided those checks because he asked for others to replace them. Witness can best answer whether he was satisfied with the explanation that was made as a reason for giving him new checks instead of the old ones, by calling attention to his letters of April 1st, enclosing the checks (Dosdall, I, 182-183).

Defendant's Exhibit 41 (I, 184) is Mr. Dosdall's letter to C. R. Street, dated April 1, 1936. It is as follows:

> "*Re*: Missouri Impounded
>
> Enclosed find checks for the amounts specified in your letter dated March 30th. The other two checks returned are being voided.
>
> The procedure you suggest seems to be somewhat of an involved way of doing business, but we take it for granted that circumstances justify your request. Remittances are being sent you, therefore, although we admit frankly that we do not know yet what it is all about."

Defendant's Exhibit 42 (I, 185) is a letter from C. R. Street, to Mr. Dosdall, dated April 2, 1936. It is as follows:

> "Will tell you all about it at the Association Meeting, at which I propose to make a detailed report.
>
> In the meantime can assure you it is all right."

(Note: The Crum & Forster check does not represent 5 per cent of the impounded premiums of the insurance companies managed by that corporation. This group had advanced $5,000.00 in 1935 (see "VIII. The Meeting in New York in 1935"), which, added to the check given on March 21, 1936, for $6,419.41 (Defendant's Exhibit 170, II, 170) makes a total contribution of $11,419.41.)

When Mr. Erskine computed the 5 per cent assessment upon this group (Defendant's Ex. 206, II, 366) he used an impounded premium figure of $328,388.27, 5 per cent of which he showed to be $11,419.41. From this figure he deducted the previous payment of $5,000.00 (Defendant's Ex. 167, II, 165), leaving a balance of $6,419.41. It appears that Mr. Erskine, in preparing Defendant's Exhibit 206, gave credit for the $5,000.00 payment in 1935, but overlooked that fact when he prepared Defendant's Exhibit 170, and gave the $5,000.00 credit a second time, because a computation shows that 5 per cent of $328,388.27 is $16,419.41 instead of Mr. Erskine's figure of $11,419.41.

(Note: The above listed check issued by Caledonian Insurance Company constitutes the entire contribution of that company (group 8) to the assessment amounting to 5 per cent of the impounded premiums, notwithstanding the fact that in 1935 that company contributed $2,000.00 to the $100,500.00 raised by Mr. Street.)

As witness recalls, the total amount of this company's impounded premiums up to May, 1935, was very nominal. The amount was $9,910.15 (R. Clark, II, 417). Mr. Street subsequently returned the $2,000.00 to this company (R. Clark, II, 437).

On November 18, 1936, the company's chief accountant wrote a letter (R. Clark, II, 425) addressed to C. R. Street (Defendant's Ex. 211, II, 426). It is as follows:

> "We understand that an adjustment has been made in reference to expenses in connection with Missouri impounded premiums, and that some companies have been refunded an amount on the advance payment covering legal services.
>
> "As we have not received a refund or advices regarding an adjustment, we would be pleased to have any information which you may be in a position to furnish us, as we are anxious to dispose of this item during the current year."

On November 23, 1936, Mr. Street wrote a letter to Mr. Clark (Defendant's Ex. 212, II, 428), in which Mr. Street states that he had intended to see Mr. Clark and explain this matter in person sooner, but it had been impossible to do so; that "I personally advanced a certain lot of money in this connection and a little more does not make any difference—expect to have it all back by March 1st—so here is my check for $2,000. you advanced and which because it was more than 5% of your impounded premiums Mr. Haid at the time he had all the other checks could not take it up with you. There is also a second check for $1,090.12, which is 11% of your impounded Missouri premiums. Please now send me your check for $495.50, payable to my order, that being 5%, the same as has been collected from the other companies. Mr. Haid can give you any explanation you need if you will verbally confer with him, or I will do the same at the first time I see you."

On November 25, 1936, Mr. Clark wrote Mr. Street a letter (Defendant's Ex. 213, II, 429) acknowledging the letter of November 23, enclosing Mr. Street's check for $2,000.00 together with that of the trustees in the amount of $1,090.12 and reciting that "a check is enclosed in the amount of $495.50, payable to Mr. Street's order, representing 5% of the company's proportion of advanced fees."

C.

TOTAL AMOUNT OF THE ASSESSMENT.

Amount collected pursuant to the New York and Hartford meetings in 1935	$100,500.00	
Amount collected following the New York meeting in 1936	347,582.64	
		448,082.64
Deduct refund to Caledonian Insurance Company	2,000.00	
Net Total Assessment:		$446,082.64
The total amount of money which Mr. McCormack received from Mr. Street (McCormack, III, 254) was	440,000.00	
Difference:	$ 6,082.64	
Amount of Net Total Assessment	$446,082.64	
Plus erroneous credit to Crum & Forster	5,000.00	
		$451,082.64
The total impounded premiums on May 1, 1936, as shown at page 4 of "Exhibit E" attached to Mr. Folonie's report (Plaintiff's Ex. 329, III, 472) is $9,020,279.01. 5 per cent of that sum is	451,013.95	
Difference:	$ 68.69	

XVI.

KNOWLEDGE AND CONDUCT OF INDIVIDUAL OFFICERS AND EMPLOYEES.

GROUP ONE.

The American Insurance Company is the parent company of this group. It and the Columbia Fire Insurance Company are under the same management. The American owns 100 per cent of the Columbia (Sommers, II, 132). These companies have a Western department at Rockford, Illinois. Mr. Sommers is almost certain that in 1935, Mr. Robe Bird of Rockford, Illinois, was in charge of the Western department (Sommers, II, 132).

Mr. Sommers knew that there was litigation pending in Missouri on fire rates (Sommers, II, 132). He was not certain of the amount but knew there were several million dollars of impounded premiums for all the companies in the federal litigation (Sommers, II, 133). Mr. Sommers thinks that he was advised in 1935 of the compromise that was then effected. He could be almost certain that he had no information that it was being negotiated before the compromise was actually made but that the information came to him "much after," because it would come to him through Rockford, Illinois. When he received the information he must have been told, in a general way, what the compromise was. He remembers the 20 per cent of the impounded premiums to the policyholders, and knows that 50 per cent went outright to the companies, and that there was 30 per cent to be held by the trustees; but he does not recall by whom it was held (Sommers, II, 133).

A check for 11 per cent out of the 30 per cent fund was delivered to these companies in Newark. It was supposed to have come to Mr. Sommers. He cannot tell whether it actually did or not, but he knew it was coming. He got that information from Mr. Haid by telephone in Newark. Mr. Haid said they would receive a remittance representing 11 per cent in the Missouri case, and on receipt of that he would ask that they return a check representing 5 per cent. Mr. Sommers does not know how Mr. Haid happened to call him instead of writing him. In ordinary correspondence a matter of that kind is usually a written communication. He can-

not recall whether Mr. Haid said he was in a hurry for the check, but the indications were that he wanted the check to get to Mr. Street, and they made their check to Mr. Street (Sommers, II, 133-134). Mr. Haid did not say what the purpose of the check was, other than that it was to be used in connection with Missouri impounded premiums. They were given to understand it was for legal expenses but witness cannot say that that was on that day. He thinks maybe it was a day or two later that they were informed it was for legal expenses but he cannot be sure. The reason Mr. Sommers has that impression is because the information came from Mr. Haid. If he had received the information that it was for legal expenses at the time the check was drawn he would have put that on a memorandum. He put the information that he got from Mr. Haid on the memorandum which reads, "In connection with Missouri impounded premiums." That is all the information Mr. Sommers had at that time. He has the impression that he later got the idea that it was for legal expenses, because his memorandum and his book showed that it was entered for legal expenses. The memorandum was made in 1939 (Sommers, II, 139-140). Mr. Sommers cannot recall the circumstances under which he got the additional information that it was legal expense. He cannot tell whether he made inquiry or whether Mr. Haid furnished it gratuitously (Sommers, II, 140). Mr. Sommers is just assuming something when he says it came from Mr. Haid at his seeking, or gratuitously. He is assuming that he wanted to know what it was for and called to ask before he gave notice to the Western department. He doesn't remember such a thing, it just occurs to him as a logical explanation. He only definitely remembers the one conversation with Mr. Haid. The mere fact that those entries ended up the way that they did, suggests that he may have done that, but he has no recollection of it (Sommers, II, 140-141).

When they issued the check they had either received the 11 per cent check or Mr. Haid had assured them that the check was on its way to them. Mr. Sommers does not know that Mr. Haid said it was urgent, but only recalls that he said that on receipt, or simultaneously with this check, they would issue their check for 5 per cent. Whatever he said, it resulted in issuing the check forthwith (Sommers, II, 139). The check (Defendant's

Exhibit 162, II, 138) was written on March 21, 1936 (Sommers, II, 134).

Defendant's Exhibit 161 (II, 136) is the requisition of American Insurance Company for a check to C. R. Street for $9,719.03 and directing it to be charged to "Western Department, Rem. Acct. in connection with Mo. Imp. Prem."

Mr. Sommers caused that requisition to be written. It is the writing of Mr. Vandenboom, but Mr. Sommers ordered it (Sommers, II, 137).

Defendant's Exhibit 163 (II, 143) is a requisition of the Columbia Fire Insurance Company for a check to American Insurance Company in the sum of $824.15 with direction to charge to Western department. It bears the notation "5 per cent legal fee—Missouri impounded prem." It is stamped "Paid, March 23, 1936."

The entry in the account of the Western department of the home office would not have been made contemporaneously or the same day as the issuance of the check. It would have to be made a day or so later because they would have to notify the Western department. That would be the end of the month. They wouldn't know until the home office notified them (Sommers, II, 140).

The check for $9,719.03 represented 5 per cent of both the American Insurance Company and the Columbia. Then the latter company paid the American for their share of $824.12 (Sommers, II, 141). Mr. Sommers would say that the voucher for the reimbursement of the American by the Columbia is in the handwriting of Mr. Vandenboom, the chief accountant. He cannot say where he got the information, "5 per cent legal fee, Missouri impounded premium" (Sommers, II, 142).

Mr. Sommers was asked why he paid 5 per cent to Mr. Street at Mr. Haid's request when he did not know the exact purpose for which it was to be used. He answered, "When Mr. Street and Mr. Haid asked for 5 per cent, I think they could get 5 per cent from us tomorrow, on any amount that they remitted to us."

"Q. Regardless of the purpose.

A. Oh! No, no, sir.

Q. Well, not knowing for what it was to be expended?

A. Oh! I can't answer that now" (Sommers, II, 141).

"Q. Did your company ever employ Mr. Street to do anything for you in connection with this litigation?

A. Only in his position.

Q. Isn't it a fact that your lawyers had charge of the litigation?

A. Yes, sir.

Q. And that anything that Mr. Street or the Subscribers Actuarial Committee did was simply voluntary on their part to keep the companies informed of what was going on?

A. Yes, sir.

Q. You don't mean to say that when you wrote a check payable to Mr. Street, without knowing just exactly what he was going to do with it, you didn't thereby intend to authorize him to use it according to the way he thought it ought to be used, do you?

A. No. I understood that he was going to use it for legal expense.

Q. Yes, but you left it to him to determine what the legal expenses were and whether it needed to be paid?

A. Yes, sir.

Q. But not to be used for unlawful purpose, such as bribery?

A. No, sir, I wouldn't let anyone charge me with that successfully" (Sommers, II, 144-145).

Mr. Sommers knew that this litigation in behalf of all the companies was being conducted through Mr. Street and other members of the Subscribers Actuarial Committee, and that Mr. Street was the man who was actively in charge of it. He and the Subscribers Committee were acting as these companies' agents in that capacity along with other companies, and had charge of it to handle as they saw best (Sommers, II, 132-133).

Neither Mr. Sommers, nor anybody connected with his company, so far as he knows, ever authorized or requested or knew that Mr. Street or any member of the Subscribers Actuarial Committee was paying any money to Mr. Pendergast or to Mr. McCormack or to anybody else to secure this compromise settlement or the litigation or the decree in the rate case (Sommers, II, 144). Mr. Sommers never met T. J. Pendergast (Sommers, II, 144). He had no words with Mr. Street. He didn't know Mr. Street was going to use it for bribery (Sommers, II, 145).

GROUP TWO.

The Aetna company has maintained a branch at Chicago for many years antedating this suit. Missouri was under the management of the Western department. The company's vice president, Mr. Ives, who afterwards became the president, was in the Western department and in charge of it at the time that this litigation first broke in 1922 (McCain, III, 332).

Mr. McCain's companies considered the Missouri litigation from the standpoint of the home office as having started in 1922, and still going on. They do not draw the distinction between one series of litigation and the total litigation. Mr. McCain does not think you could expect them in Hartford, not having direct supervision over Missouri, to keep up with the multiplicity of litigation that they have made them indulge in out in Missouri. He does not think anybody in the world could do that (McCain, III, 348).

Mr. Ives came to Hartford as president of the company about 1933 or 1934, and then the only jurisdiction he maintained over the operation of the Western department was that he supervised the company's interest in the Missouri case. He was at one time chairman of the Subscribers Actuarial Committee in Chicago. Witness supposes he gave up that job, but he supervised the Missouri litigation and then died in 1934 (McCain, III, 332).

When Mr. Ives came to Hartford there was no discussion of the Missouri case so far as the officers were concerned, and the supervision of that matter by Mr. Ives was purely a personal one. Otherwise, the entire thing would have been in the Western department (McCain, III, 332).

Mr. McCain is aware of the fact that there is a Missouri rate controversy, or litigation, in the federal court in which his companies had impoundments involving an alleged 16 - 2-3 per cent increase (McCain, III, 331-332). Mr. McCain knew Charles R. Street of Chicago (McCain, III, 332).

Superintendent Hyde in 1922 made a reduction of 10 per cent in the rates (McCain, III, 348) and Mr. McCain thinks that shortly after that litigation was settled the companies then put on this proposed 16 - 2-3 per cent. So when Mr. McCain is figuring the rate litigation, he

is figuring from 1922 on up. They considered it sort of one and the same thing (McCain, III, 349).

This case, so far as details are concerned, was handled in Chicago and Mr. McCain does not know how they got their assessments or how the assessments were made, nor how the details of the assessments were made up (McCain, III, 346).

Mr. McCain did not know how the assessment was made. He knew they were paying their part to this committee that was handling it, and, however they were levying the assessment on all companies, he knew they were paying their part. He never even saw the bills that were rendered and does not know whether the amount paid to lawyers was segregated or not (McCain, III, 347). He would imagine that the Missouri Inspection Bureau had their own salaries to pay and the inspections to be made to keep the rating going from those assessments. He knows that the rating bureaus have to have their salaries paid if they are going to function (McCain, III, 347). These two companies together had $239,939.16 in the impoundments (McCain, III, 332). He does not know what percentage of his assessment went to lawyers. The Aetna paid $51,971.00 regular expenses and the World paid $5,589.95, making a total of $57,591.00. The total impounded premiums were $292,000.00; so Mr. McCain says that was a heavy amount of legal expense (McCain, III, 348). Mr. McCain got this off the books. This is purely a statement of the amount of premiums impounded and the checks and expenses charged off (McCain, III, 348). He did not say he thought these lawyers were not worth the money they were paying. He just meant it was expensive litigation (McCain, III, 347).

Mr. McCain made a trip to the Western department, then to the Pacific Coast and then to Honolulu. He did not even know the second check had been issued by his company until after this entire matter broke in the paper (McCain, III, 340). He came back after the check of March 23, 1936, was issued. He made no inquiry about it and no one said anything about it. He could not have made inquiry about it, because he did not know anything about it. After the revelations came out in the papers and there was a meeting in New York in which the question of the future conduct of the business came up, something was said about the second payment the companies made and witness said "We didn't make any second pay-

ment," and they said, "Yes, you did," and I said, "No, I am sure we didn't, we only made one payment of $5,000.00."

So then they brought over the list of payments to show Mr. McCain, and that indicated they had paid $11,991.00. That is when he went back and started the investigation in his office to find out whether they had made that payment. Both Mr. Burnham and Mr. Grant said they had made it. Mr. McCain said, "On whose authorization?" They said they did not remember. That is when Mr. McCain asked in all of the officers and none of them remembered it. That is all he knows about it (McCain, III, 344-345).

He tried to find out how the check of March 23 came to be issued, and has never received any very satisfactory explanation. Mr. Haid tells Mr. McCain that he called up and asked for this check. Mr. McCain checked all of his officers and none of them seemed to be sure that they received Mr. Haid's message. Mr. McCain is inclined to think that Mr. Haid must have called Mr. E. J. Sloan, the senior vice-president at that time. Mr. Sloan is very hazy about whether he authorized it or not, and Mr. Burnham does not remember who came to him to get the check; but there is no question about its issuance. Mr. McCain thinks it came through a request by Mr. Haid. Mr. Sloan is living (McCain, III, 344).

George L. Burnham, treasurer, signed the check (Exhibit 322, III, 343) (McCain, III, 344).

Defendant's Exhibit 323 (III, 350) is a statement showing the distribution for the Aetna and the World Fire and Marine, as follows:

5%	The Aetna Insurance Company	$10,827.45
5%	World Fire and Marine Ins. Co.	1,164.50
	Total	$11,991.95

It is signed by G. H. Grant, secretary of the company. It is the computation of the amount that the World Fire and the Aetna had of the 5 per cent (McCain, III, 344).

GROUP THREE.

This Company's home office in 1935 and 1936 was and ever since has been at Watertown, New York (Waterman, II, 54).

Mr. Waterman knew his company had a suit in the federal court in Kansas City, involving rate litigation in the State of Missouri (Waterman, II, 54). He thinks that counsel for the Western Underwriters Association were Hicks and Folonie under the direction of the Subscribers Actuarial Committee. This company either authorized or acquiesced in the suit being brought in the company's name. Mr. Waterman knew of its pendency all along until it was settled (Waterman, II, 54). Mr. Waterman knew Mr. Street slightly. He had come in contact with him several times. He knew that Mr. Street was chairman of the Subscribers Actuarial Committee which was handling the litigation (Waterman, II, 58). He knew that Mr. Street as chairman of the Actuarial Committee was really conducting the litigation (Waterman, II, 67). Mr. Waterman never, at any time, by telephone, telegram, letter or personal conversation, asked Mr. Street to do anything for him in connection with that litigation. He never in any way asked Mr. Street to commit bribery or to pay any money to bring this compromise about (Waterman, II, 66).

To the best of his recollection, the first knowledge he had that the suit had been settled was in the spring of 1935. He heard the report there had been a compromise settlement reached. Personally, he was not particularly concerned. He was relieved to know that there was some possibility of ending the litigation (Waterman, II, 54).

In a general way Mr. Waterman vaguely knows of the terms of the compromise. As he recalls it, the agreement was that the policyholders were to receive 20 per cent, and the companies were to receive 80 per cent. He only vaguely recalls that of the 80 per cent the companies were to receive 50 per cent of the impoundments outright, and that 30 per cent was set aside in the hands of the trustees to pay expenses, because that was a matter of accounting and did not come under his jurisdiction; but he had the impression that that was the fact (Waterman, II, 54-55). It was Mr. Waterman's understanding that a distribution had been approved by the court. He has a vague recollection that the companies would get 50 per cent, the policyholders 20 per cent, and 30 per cent

was set out in the hands of Street and Folonie, as trustees, to pay the expenses of the litigation, including those of the State and of the companies, and if anything remained it was to be returned to the companies; but he cannot swear that he knew that, in those exact terms. It is his recollection that his company afterward received 50 per cent of all of its impoundments in the case up to May 1, 1935, and he supposes his company accepted it (Waterman, II, 55). Mr. Waterman thinks his company received a remittance some time in March, but is not able to state what percentage it was of the company's impounded premiums (Waterman, II, 55).

Mr. Waterman signed the check (Exhibit 143, II, 56) pursuant to a telephone conversation from Mr. Erskine's office (Waterman, II, 55). Mr. Erskine, Mr. Haid's assistant, requested the check. He telephoned to the office of the Agricultural and first talked to one of the vice-presidents who knew nothing about the Missouri situation; so this vice-president had Mr. Erskine talk to Mr. Waterman. Mr. Erskine said he wanted the Agricultural to send this check, payable to the order of Mr. Street as Agent, and he gave the figures. There was nothing said about percentage. Mr. Waterman naturally asked him what it was for and Mr. Erskine said, as Mr. Waterman recalls, that it was for some legal expenses in connection with the Missouri rate case. Mr. Waterman asked him more definitely as to what the expenses were, but did not get any satisfaction. Mr. Erskine merely said that he did not know, according to Mr. Waterman's recollection. Mr. Erskine was apparently not able to tell Mr. Waterman anything more definitely than that he wanted it for legal expenses (Waterman, II, 57).

Mr. Waterman talked the matter over with Mr. Wallace, the vice president, who had the first conversation with Mr. Erskine, but Mr. Wallace professed not to know anything about the case (Waterman, II, 57-58). So far as Mr. Waterman knows, A. C. Wallace, the vice president, is in Watertown. It is Mr. Waterman's idea that he has told substantially what Mr. Wallace knows about it. Mr. Wallace's involvement in the telephone conversation came about merely because Mr. Erskine first tried to contact Mr. Waite, the president, and he followed down the list of officers, got Mr. Wallace, told what he wanted, and Mr. Wallace said he did not know anything about it but would tell Mr. Waterman about it. Mr. Waterman

demanded a little more detail; so Mr. Wallace said he would get Mr. Erskine on the telephone and let him talk to Mr. Waterman, which he did. That is all of Mr. Wallace's connection with it (Waterman, II, 63-64). It is Mr. Waterman's recollection that Mr. Erskine asked that the check be made to C. R. Street, Agent (Waterman, II, 58). When Mr. Erskine assured Mr. Waterman this was going to Mr. Street who would pay it out, that satisfied Mr. Waterman. Mr. Erskine represented that it was an emergency, that he wanted the check immediately, and that is why the matter was not held up until Mr. Waite's return (Waterman, II, 64). Mr. Erskine never said anything about it being an emergency. He merely said he wanted the check forwarded that day and witness inferred there must be an emergency (Waterman, II, 65). Mr. Erskine, representing the Executive Association, gave him to understand it was an emergency and that they needed the money right away but could not give the explanation, but said to send it to Mr. Street. Rather than take the chance of failing to send it, Mr. Waterman sent it, and waited for Mr. Street (Waterman, II, 64). Mr. Erskine did not tell what the emergency was and Mr. Waterman did not ask him. Mr. Erskine simply told Mr. Waterman that it was something in connection with the Missouri rate case. Apparently Mr. Erskine was not familiar with the circumstances and could not really satisfy Mr. Waterman's curiosity at all, and nobody else ever has (Waterman, II, 64).

Mr. Waterman sent the check to Mr. Street because Mr. Erskine assured Mr. Waterman that it was in order to do so. He sent it on Mr. Erskine's representation, although Mr. Erskine was not able to tell him very much about it. Mr. Waterman cannot recall whether he expressed some doubts about it in the telephone conversation (Waterman, II, 58).

Mr. Waterman did not ask Mr. Street or Mr. Erskine whether the funds set out for expenses had been exhausted so that he had to have this check (Waterman, II, 64). As to whether 30 per cent had been set out for that purpose and was in the hands of the trustees, Mr. Waterman was not familiar with the details, because it was an accounting matter. Possibly it occurred to him that this 30 per cent would have been the source for legal expenses, but he had the check issued (Waterman, II, 57).

At the time Mr. Waterman sent this $2,049.89 to Mr. Street his company had some $40,000.00 of premiums impounded in the hands of the court, and it is his understanding that it had already received back something over $20,000.00 in cash from that fund. Then, on or about that time, his company got 11 per cent more, which he thinks was on the following day. Mr. Erskine that day assured Mr. Waterman that he would, within a short time, receive a check for forty-four hundred and some odd dollars so Waterman's company received nearly $25,000.00 out of that litigation (Waterman, II, 66).

Mr. Waterman thinks that Defendant's Exhibit 145 (II, 59) is a letter which he sent to Mr. Street in which he inclosed the check (Waterman, II, 58). The letter is dated March 21, 1936, and is as follows:

> "We are in receipt, this morning, of a telephone communication from Mr. Haid's office in New York, and Mr. Erskine has asked us to send to either yourself, or to Mr. Folonie, our check for $2,049.89 in payment of some extraordinary expenses incurred in connection with the Missouri case. We beg to transmit the check herewith, together with receipt, and trust that we shall have some explanation as to the reason for this disbursement."

In his letter witness said it was a payment of some extraordinary expenses in connection with the Missouri case. He assumed it was legal expenses. From the letter he would judge that he wrote it the same day that he talked to Mr. Erskine; that is the best of his recollection. He had the conversation fresh in his mind at the time. His statement that it was extraordinary expenses was the inference that he got from Mr. Erskine's conversation (Waterman, II, 65).

Defendant's Exhibit 143 (II, 56) includes the receipt of "C. R. Street, agent for companies," for the check (Defendant's Exhibit 143) and contains the recital "Legal Expense *re* Missouri Rate Case."

Defendant's Exhibit 144 (II, 61) is a letter dated March 23, 1936, from C. R. Street to Mr. Waterman. It is as follows:

> "I am returning receipt for check inclosed in your letter of the 21st. It is a long story but one

told in detail to a few in New York, all of the 'big boys' who could be gotten together during the winter vacation season—Messrs. Kurth, Warner, Koop, Sturm and Haid, will tell you all about it at White Sulphur."

Mr. Waterman knew that the men mentioned in the letter were presidents or managers of certain big companies (Waterman, II, 62).

Mr. Street returned the receipt which Mr. Waterman sent with the check. Mr. Waterman supposes Mr. Street returned the receipt with the letter (Waterman, II, 62). His company usually asks for a receipt if it is a check which is sent out for anything in the way of expense (Waterman, II, 60). He does not know the handwriting of the words "agent for companies" beneath Mr. Street's signature. He does not recognize it as the handwriting of any of his people (Waterman, II, 65-66).

Mr. Waterman assumed from the letter that Mr. Street would make a report at White Sulphur. His impression from the letter was that Mr. Street felt the matter was confidential (Waterman, II, 64). By the words "will tell you all about it at White Sulphur," Mr. Waterman supposes Mr. Street meant the subject of his (Waterman's) letter. He supposes Street was going to explain what the money was for. He does not recall that he ever had a conversation with Mr. Street after that date, having never sought to contact him after that date to inquire more about the settlement, one reason being that in the month following that correspondence the semi-annual meeting of the Western Underwriters Association was held at White Sulphur. Witness did not attend that meeting, as he had some business in the West and was out in the field at that time. He does not recall that he ever saw Mr. Street again. He never wrote Mr. Street for an explanation (Waterman, II, 62-63). Mr. Waterman never made any further effort to find the details than what he has just said. The matter was not submitted to his board of directors (Waterman, II, 63).

The company's chief accountant asked Mr. Waterman to what account he should charge this "charge" and Mr. Waterman suggested that he charge it to legal expenses (Waterman, II, 67). Mr. Waterman described it as legal expense in the voucher because that is the only account they knew of to which it could be charged (Waterman, II, 65). He knew of no other place to charge it. He had

gotten that information from Mr. Erskine only by inference. He got the idea that this was extraordinary expenses merely from the fact that they had presumed that all the legal expenses had been taken care of through their assessments, and he supposed that this was something which had come up since. That is why he called for an explanation in his letter to Mr. Street. Exhibit 144 is the only assurance he got, and he presumes it would be the inference that Mr. Street took it to be something extremely confidential or he would have written Mr. Waterman about it. It was Mr. Waterman's impression that it was extremely confidential; another inference would be that it might be long and involved and could not be covered by a letter (Waterman, II, 67).

Mr. Waterman would say it did not occur to him that it was strange that Mr. Street did not make an explanation at the time he wrote the letter (Exhibit 144). Mr. Street was not a man who explained things to people whom he thought did not have any business to know about them. Mr. Waterman had a right to know what he paid out his money for, and Mr. Street volunteered to tell him at some future time, but that date never eventuated. Apparently Mr. Street did not see fit to commit anything regarding it in correspondence. Mr. Waterman had no idea why he could not have put it in correspondence. He has never talked to anyone who talked to Mr. Street at White Sulphur or elsewhere, to whom Mr. Street explained the settlement (Waterman, II, 63).

The Agricultural people have always had the greatest amount of confidence in Mr. Street's ability to handle this litigation and other affairs of the company in connection with the Subscribers Committee. That was really the reason why Mr. Waterman did not hesitate to make the check to Mr. Street and send it to him (Waterman, II, 62).

Mr. Waterman merely met Mr. McCormack casually at one time, but never knew him. He never knew Mr. Pendergast nor Mr. O'Malley. He never, at any time, by telephone, telegram, letter or personal conversation, had any sort of communication with Mr. Pendergast, Mr. O'Malley, or Mr. McCormack, directly or indirectly, concerning this Missouri rate litigation or its settlement (Waterman, II, 66).

GROUP FOUR.

Mr. Martin knew there was a compromise effected about May, 1935, and was familiar with the terms and provisions of that agreement. He knew that a federal court decree was entered thereafter about February, 1936 (R. Martin, II, 1). Mr. Martin was asked if he received a letter from the Subscribers Actuarial Committee addressed to all of the companies and setting forth the terms and provisions of the compromise. He answered that he just has that Missouri rate circular of February 4, 1936 (R. Martin, II, 1). He had absolutely no information about $100,000.00 being raised in May, 1935. He never even had a suspicion that there had been such a thing until talking to the attorney a week ago (R. Martin, II, 1).

On the morning of March 23, 1936, Mr. Martin received a telephone call from Mr. Haid. The conversation was to the effect that there was a rebate of 11 per cent of $43,183.47 representing the impounded premiums due to this company for which he had a check in hand and he was sending it to witness, and as there were some unadjusted expenses "Or whatever it was that he did say, that I cannot recall," there was 5 per cent of this amount, or he wanted 5 per cent of that amount, which amounted to $2,159.17, to be returned in the form of a check addressed or issued in the name of C. R. Street, Agent (R. Martin, II, 4, 6). On receipt of that message Mr. Martin told Mr. Barry, secretary in charge of financial matters, that a messenger would bring this check to their office and that they were to have ready a counter check of $2,159.17 to deliver in the name of C. R. Street, Agent (R. Martin, II, 4).

There is no doubt that Mr. Haid told Mr. Martin to make the check to C. R. Street, Agent, because there is a memorandum in Mr. Martin's handwriting of that date which shows that quite clearly—C. R. Street, Agent. Mr. Martin's impression would be a very natural one that Mr. Street would be in close collaboration with the attorneys, Folonie's firm, all through the years, in this matter, and it never came in his mind to question why it should be made to Mr. Street. The fact that the trustees had charge of the disbursement of funds did not occur to Mr. Martin at the time (R. Martin, II, 7).

Asked whether he understood from Mr. Haid that some unanticipated expenses had accrued, Mr. Martin stated that he questioned whether he even thought that

deeply on the subject. That is a matter that was running on even before he came to New York (R. Martin, II, 6). Mr. Martin had heard of the 30 per cent that had been allocated for payment of expenses (R. Martin, II, 6). Mr. Haid's conversation was quite intelligible and appeared to Mr. Martin as a clear-cut statement that he had this amount in hand, representing 11 per cent and wanted the 5 per cent check drawn (R. Martin, II, 6). Mr. Haid called on Mr. Martin for the 5 per cent (R. Martin, II, 6).

Mr. Martin can now only guess, but he presumes at the time the natural conclusion in his mind was that the check was drawn to their order; that they should only get 11 per cent and give 5 per cent back. He did not know at the time why it was done in that fashion, and has not really learned since (R. Martin, II, 6).

In 1936 Mr. Martin's company received an 11 per cent remittance out of the 30 per cent fund. It was paid in New York, and his office received a letter from Mr. Schoen sometime prior to March 24, 1936. Mr. Schoen was the Chicago manager (R. Martin, II, 1-2).

Defendant's Exhibit 120 (II, 3) is a letter written by Mr. Barry to Mr. E. M. Schoen, Manager of the Atlas Insurance Company, Chicago, Illinois, dated March 24, 1936. It is as follows:

"Dear Sir:

Re: Missouri Impounded Premiums.

Referring to your letter of the 12th instant we beg to advise you that a representative of the Trustee* in the above case turned over to us a check in the amount of $4,750.17 with the explanation that this check was a further payment on the impoundings made up to April 30th, 1935 and represented 11% of our premiums impounded to that date.

The premium figures used by the Trustee were $43,183.47, whereas in your letter of January 30th, this year, the amount that you had impounded with the State up to July 15th (which we assume represented the undeposited premium collections to April 30th, 1935) was $44,984.61 and we are wondering which of the two sets of figures are correct.

Upon instructions from the representative of the Trustee we were asked to return to the Attorneys

a check in the amount of $2,159.17 representing 5% of the impoundings of $43,183.47. The check was made payable to C. R. Street, Agent, representing the Attorneys' share of this recent payment.

Both the above items have been entered in our books here as a debit and credit to Branch Remittance; the payment of $4,750.17 should be earmarked and credited to 'Missouri Impounded Premiums' as a further payment on account as above stated. The amount of $2,159.17 should be earmarked and charged against 'Missouri Impounded Premiums' with a notation that it represents Attorneys' fees.

Will you kindly check the above premiums quoted by the Trustee and also the amount quoted in your letter of January 30th, this year, and advise us the correct figures.

Yours very truly,

FJB:IW Secretary"

In handwriting at the bottom of the letter appears the words,

"Actually a representative of the powers that be."

Asked who was the "representative of the trustee" mentioned in the letter, Exhibit 120, Mr. Martin said that Paul L. Haid was the only representative he knows. The notation "Actually the representative of the powers that be" is in the handwriting of Frank J. Barry. Counsel called the attention of Mr. Martin to a star inserted in ink after the phrase, "A representative of the trustee," and Mr. Martin said that the star was put on the letter for reference to the footnote. The representative of the trustee was Paul L. Haid. Any information that Mr. Barry got in this matter must have come from Mr. Martin because there is no other contact that Mr. Martin has ever heard of or was aware of (R. Martin, II, 4-5). Generally there is nobody commonly referred to in the Atlas Insurance Company or the insurance world as "the powers that be." Mr. Martin does not know and cannot give any information as to what Mr. Barry meant by that notation. Mr. Barry is in northern New Jersey on a vacation. "He will be back in New York next Monday" (R. Martin, II, 5).

GROUP FIVE.

Mr. Hooker understood some of the terms of the compromise, although he had not been in close contact with it (Hooker, III, 150). He issued the check (Defendant's Exhibits 278 and 278-B, III, 137) pursuant to Mr. Haid's request (Hooker, III, 151). He thinks that the 11 per cent check came the next morning after he gave that check, Mr. Haid told Mr. Hooker it was coming (Hooker, III, 150).

Mr. Hooker issued the check as a result of a telephone call from Mr. Haid, president of the Executives Association. As near as Mr. Hooker can recollect, Mr. Haid told him that there was additional legal expense needed in connection with the Missouri rate litigation, and that their share was so much, and that there would be forwarded by the rate committee, the Subscribers Bureau, a refund check of a certain amount. Exhibit 284 (III, 145) is a photostat of witness' memorandum. When the telephone conversation ended, witness called his secretary and dictated (Hooker, III, 150). Witness thinks that he intended to make the check for 5 per cent "as $3,500 previously paid in" (Hooker, III, 151).

Defendant's Exhibit 283 (III, 144) is a handwritten memorandum. It is as follows:

"Total impounded prems. to May, 1935	133,169.63
11% checks herewith	14,648.66
5% impounded prems —	6,658.48
Previous payment	3,500.00
Check to balance	$ 3,158.48
Payable to C. R. Street *Agent*	
Check to be sent *here*"	

Defendant's Exhibit 284 (III, 145) is a letter to Mr. Alfred Stinson, vice president, with copy to Mr. Linde, from J. K. Hooker, Vice President. It is dated March 24, 1936, and is as follows:

"This morning I received a telephone conversation from President Haid of the I.E.A. requesting that we forward to his office an additional check of $3,158.48 payable to C. R. Street, Agent which is to supplement the amount that we sent under date of

May 4th, 1935 via Vice President Long of the Phoenix to be delivered to C. R. Street and this payment is for the same purpose of advanced legal fees in connection with the rates in Missouri.

"Mr. Haid also advised that he was mailing to me this afternoon a check payable to the Automobile Insurance Company in the amount of $14,648.66 which is a refund to the Automobile from some unnamed account in the Missouri litigation.

Vice President"

"Information in regard to check of $14,648.66 received is as follows:

Total impounded prems.	$133,169.63
11% checks herewith	14,648.66
5% impounded prems.	6,658.48
previous payment	3,500.00
Check to balance	$ 3,158.48"

On the margin of the letter opposite the figures $14,648.66 is a typewritten notation as follows:

Auto ck.	11,699.43
Stand. ck	2,949.23

The sum which witness arrived at as the proper figure was the sum that Mr. Haid told him on the telephone. It is witness' understanding that Mr. Haid just gave him the amount. Exhibit 284 is the message witness got and put down on paper as soon as he could (Hooker, III, 151-152).

Defendant's Exhibit 280 (III, 140) is a requisition of the Automobile Insurance Company for check payable to C. R. Street, Agent, for $3,158.48 on account of advance legal expense to be charged "legal expense" with the notation that it was requested by phone from Mr. Paul Haid.

The amount of the check was entered in the expense journal as of March 24, 1936, debited to "general expense" as "legal expense" (Defendant's Exhibits 290 and 291, III, 149). Defendant's Exhibit 292 (III, 149), a sheet from the legal expense account for 1936, throws no further light upon the transaction.

Defendant's Exhibit 285 (III, 146) is a letter dated March 24, 1936, from Mr. Hooker, Vice President, to Mr. Paul L. Haid, President, Insurance Executives Association, marked "personal." It is as follows:

> "In accordance with our telephone conversation this morning, I am inclosing check in the amount of $3,158.48, payable to C. R. Street, Agent. Please acknowledge receipt and thereby oblige."

At the time the check was issued the 50 per cent distribution had been made, but the full amount may not have been made (Admission, III, 151). But when Mr. Hooker was examined he did not know whether or not that was true (Hooker, III, 151).

Mr. Hooker thinks he had a recollection or an understanding of the distribution under the compromise at the time of this incident—50 per cent to the companies, 30 per cent to the trustees for expenses, and 20 per cent to the policyholders. He did not have any clear understanding at that time as to whether or not, if the entire 30 per cent was not required for expenses, the companies were to get the balance back *pro rata* (Hooker, III, 150-151).

Defendant's Exhibit 286 (III, 147-148) is a letter dated July 15, 1938, from A. V. Linde, assistant secretary to L. H. Roche, auditor of the United States Internal Revenue Department, Hartford, Connecticut.

> "As requested in our personal interview of yesterday, I am enclosing herewith photostat copy of voucher dated May 4, 1935, from which our Cashier's Department issued a check to C. R. Street, Chairman for $3,500.00, also voucher dated March 24, 1936, together with check payable to C. R. Street, Agent, in the amount of $3,158.48, both issued under the authority of the writer.
>
> "We have no letters requesting the payments covered by the above mentioned checks and in explanation thereof the following are the facts.
>
> "Regarding the first check of $3,500, Mr. C. R. Street called a meeting in Hartford of Hartford Companies to secure finances required to continue the Missouri Rate Litigation. Alfred Stinson, Vice President of our company, attended the meeting and

agreed to advance $3,500 for our Companies. Mr. Stinson upon returning from the meeting requested from me a check for this amount and the attached voucher was issued from which the check was secured and transmitted by Mr. Stinson.

"The second check for $3,158.48 representing the additional amount to bring our assessment to 5% of the impounded premiums of our Companies was drawn after Mr. Paul Haid requested over the telephone to our Vice President, J. K. Hooker, that the check be sent to him as requested by Mr. C. R. Street. Mr. Hooker, therefore, requested the check from the writer who thereupon drew the voucher, upon which authority the check was drawn, photostat copies of both being enclosed, and transmitted same to Mr. Paul Haid at New York City.

"Both payments were charged to legal expense.

"You inquired whether the 5 per cent payment was claimed as a deduction in the Federal Income Tax Return. As you will note from the foregoing, the 5% was paid in two parts—one for $3,500 on May 4, 1935, and the other for $3,158.48 on March 24, 1936. We naturally treated both as a deduction as they were included in our expenses in both the 1935 and 1936 returns as submitted to the United States Government. However, when our year 1935 report was audited the $3,500 was disallowed and we have entered no objection to this action. The year 1936 report has not been audited and we do not know what action the Government will take in respect thereto, but the payment has been claimed as a deduction.

"A. V. Linde, Assistant Secretary, is the officer who has custody of Company records as pertaining to the above matters and who can identify same and testify regarding them.

"We trust this is the information desired and if there is any further way we can be of assistance, you may depend on our complete cooperation."

GROUP SIX.

The companies comprising this group that were in existence in 1935 and 1936 were the Bankers and Shippers Insurance Company, New Jersey Insurance Company and Pacific Fire Insurance Company. Six or seven months

ago the name of the New Jersey Insurance Company was changed, or at least the Jersey is taking over and continuing the old New Jersey (Bowden, II, 75). As first vice-president, Mr. Bowden was the man in the office who had knowledge concerning the Missouri rate litigation. And, as much as anybody in the office, he handled the matter as it came into the office (Bowden, II, 75). These companies are not members of the Subscribers Actuarial Committee (Bowden, II, 89). The Bankers and Shippers group are not a member of the Insurance Executives Association (Bowden, II, 89).

Mr. Bowden was asked how his company ever got its case instituted in the federal court; if somebody just took it upon themselves to bring a lawsuit without their consent and witness answered, "No, I am not quite clear in this particular case, but there have been quite a number of companies where the Actuarial Committee acted, and when they asked if we would go along, it was the only practical thing for us to do." He presumed they asked if his companies would go along. He cannot find anything in his files which would definitely say "yes." They certainly knew they had a lawsuit (Bowden, II, 92). They followed along with the Actuarial Committee. It was the only practical way for them to do (Bowden, II, 93).

Mr. Bowden is not prepared to answer whether the Inspection Bureau notified his companies that a suit had been brought in their name involving this 16 2-3 per cent rate litigation and with that knowledge they just acquiesced (Bowden, II, 92). Mr. Bowden knew that Mr. Folonie or his firm was acting for his companies as attorneys in the Missouri litigation (Bowden, II, 90). Mr. Bowden did not attend the 1935 meeting in regard to this case or the raising of any money in connection with it, nor any meeting of the insurance executives where a proposed settlement was discussed (Bowden, II, 89). He knew of the settlement in 1935, and in a general way knew its terms. They were, 20 per cent to the policyholders, 50 per cent outright to the companies, 30 per cent set up in a trust for the payment of litigation expenses. The 30 per cent, as he remembers it, was for litigation expenses to cover all expenses incurred by the State and by the companies in connection with this matter (Bowden, II, 75). He knew that after the compromise a federal court decree was entered (Bowden, II, 76).

Mr. Bowden's companies received no information in regard to a $100,000.00 fund being raised. After the compromise agreement they received the greater part of 50 per cent from the custodian and thereafter received 11 per cent and paid back 5 per cent. Mr. Bowden received the check for 11 per cent from Mr. Erskine of the Insurance Executives Association, who delivered it to witness personally at his office (Bowden, II, 76). They were very glad to get it back (Bowden, II, 92). They were certainly glad to receive the 11 per cent. They got the 50 per cent, and they did not get it. A lot of it went back to agents, etc.; they only got very little (Bowden, II, 93).

At that time Mr. Bowden had a conversation with Mr. Erskine in a general way, but cannot recollect the full conversation (Bowden, II, 76). He understands that Mr. Erskine is secretary to Mr. Haid or of Mr. Haid's association of insurance executives (Bowden, II, 77). Mr. Erskine did not call upon them as a representative of their company. Mr. Bowden just knew who he was and knew him by reputation (Bowden, II, 89). Mr. Erskine asked for the check for 5 per cent of the impounded premiums. He said he had a check for 11 per cent of the amount Mr. Bowden's companies had impounded. That was a returned expense check, but he still wanted another check given to him for 5 per cent. He wanted to trade the 11 per cent for the 5 per cent which would net Mr. Bowden's companies 6 per cent. Mr. Bowden asked him in a general way what the 5 per cent was for, and as near as Mr. Bowden can recollect, Mr. Erskine told him for further attorneys' fees (Bowden, II, 76). Mr. Bowden does not recall Mr. Erskine's telling him that the 30 per cent fund had been exhausted. Mr. Bowden knew that the 30 per cent was for the payment of expenses. He does not recall asking Mr. Erskine anything specifically like why he was giving 11 per cent and exacting 5 per cent instead of simply giving a straight 6 per cent check. He thinks their conversation was more general. Mr. Bowden does not think it occurred to him that that was an unusual and a cumbersome way of handling it (Bowden, II, 76-77). Mr. Bowden does not remember in detail at all, but whatever he asked Mr. Erskine convinced him that it was all right to issue the check (Bowden, II, 76). Mr. Erskine said he wanted the check right away that day. Mr. Bowden issued or caused to be issued checks for all three of his companies

for respective amounts of their 5 per cent (Bowden, II, 77).

Defendant's exhibit 150 (II, 83) is a check requisition of Pacific Fire Insurance Company, dated March 24, 1936, for a check to R. J. Folonie, agent, for $1,602.17.

Defendant's exhibit 151 (II, 84) is a memorandum of receipt of New Jersey Insurance Company, dated March 25, 1936, for $1,402.27, from R. J. Folonie for "Missouri Imp. Custodian."

Defendant's exhibit 152 (II, 85) is the requisition of New Jersey Insurance Company for the check dated March 24, 1936, to the order of R. J. Folonie for $1,402.27.

None of the requisitions showed the purpose for which the money was to be used, other than Missouri impoundings (Bowden, II, 86).

Mr. Erskine gave the vice-president of the Bankers and Shippers group the option to make the check to Mr. Street or to Mr. Folonie as agent (Bowden, II, 77).

"Q. Agent for whom?

A. Well, agent.

Q. Well, for whom?

A. I don't think I went into it very far. It didn't make a tremendous impression on me."

Mr. Bowden selected Mr. Folonie because he had been their attorney for a number of years in other matters. He knew Mr. Folonie very well. He did not know Mr. Street at all (Bowden, II, 77). He never met Mr. Street (Bowden, II, 88). None of these companies ever requested Mr. Street to act for them in any way. None of them ever authorized or requested Mr. Street to pay money for bribery to induce anybody to settle the case (Bowden, II, 90). None of the men of this group knew anything about this situation. Mr. Bowden never knew Mr. Pendergast nor Mr. O'Malley. He did know Mr. McCormack. He never, by letter, telephone, telegraph or personal contact, discussed the Missouri rate situation or litigation or any settlement in any way with Mr. Pendergast, Mr. O'Malley or Mr. McCormack. Certainly none of his checks to Mr. Folonie went to any one of those men with his knowledge (Bowden, II, 89). Mr. Bowden had the checks made to R. J. Folonie, agent, instead of C. R. Street, because he knew Mr. Folonie and had known him for some years, and because he was their attorney (Bowden, II, 90, 91). He did not know Mr. Street. In other

matters Mr. Folonie was their attorney (Bowden, II, 90). Mr. Bowden does not think that in that case he considered Mr. Folonie their attorney. He considered Mr. Folonie was their attorney before, and he knew Mr. Folonie was a lawyer and was their attorney in the general case (Bowden, II, 91-92).

Mr. Bowden gave those checks to Mr. Erskine (Bowden, II, 82). The "paid" stamps on the back of the checks show that they were credited November 17, 1936. It did not come to Mr. Bowden's attention between March and November of 1936 that these checks were still outstanding, and he had not the slightest idea why they were held during that period of time. It has never been called to his attention before. It was called to his attention when they heard or read in the newspapers of this scandal, and they immediately went down in their files and got these checks for the purpose of finding out what the files revealed. Mr. Bowden then learned for the first time that these checks had not been cashed for six months after their issuance (Bowden, II, 86).

Defendant's Exhibit 153 (II, 87) is a ledger sheet from the account designated "Missouri Impound Custodian," for the Pacific Fire Insurance Company. It shows the sum of $1,602.17, payable to R. J. Folonie and entered as "legal fees"; that the sum of $3,524.78 was entered as "refund legal fees."

Mr. Bowden was asked if the words "legal fees" were not written in at a different time from the regular entry. He answered, not to the best of his knowledge; that it looks like it was different writing; that it looks like it was written at a different time or at least with a different pen. He has no explanation of that fact (Bowden, II, 87).

In reference to exhibit 153 Mr. Bowden said he was not an accountant and could be confused very easily on it; that it is a very clear, easy explanation of all these things, but he does not know anything about it and therefore cannot state why $1,602.17 is under the column "cash received." They paid Mr. Folonie, as agent, a check for that amount dated March 24, 1936 (Bowden, II, 90-91). When they went to see what their files revealed Mr. Bowden did not come across the apparent peculiarity showing the words "legal fees" to have been written at a different time. This is the first time it has been called to his attention. He has no explanation of it. He will not say that it was written at a different time. They look like

different writings, but he is not prepared to say. He does not know any more about it than the master can tell by looking at it (Bowden, II, 87-88). The requisitions do not mention legal fees. Defendant's exhibit "152" is typical for the other companies; it is their regular form and it does not mention anything about what the check is for (Bowden, II, 87). Mr. Bowden has no explanation for the fact that quite a number of other entries in regard to legal matters have used the words "legal expense" all the way through. He can see where there can be some difference in the different entries. They use the words "legal expense" in connection with losses, and a matter of this kind might be "legal fee," might be something specific. Mr. Bowden did not understand that he was paying a specific legal fee at the time he issued the R. J. Folonie check. He absolutely knew that it was not a disbursement to Mr. Folonie for attorney's fees, and he had no information whatever as to whom the attorneys' fees were to be paid. He never did talk to Mr. Folonie about the matter thereafter, and has not seen him since that time (Bowden, II, 88). Mr. Bowden has never talked to Mr. Erskine or Mr. Haid since that time (Bowden, II, 88-89).

Mr. Bowden is not prepared to say whether the papers headed "Memorandum of Receipt" are memoranda in his office of the receipt of money that they got from the custodian. He is not familiar enough with the bookkeeping in their office to tell just exactly what they mean. One shows that it came from R. J. Folonie. He questioned something of this kind in his office yesterday about these checks. He thought the check for 11 per cent came from Folonie and Street. The explanation was that the general custom in his office, when they enter a check, is just to enter the first name, if it is in two or three names. They do not make a full entry at all, but just a reference to it (Bowden, II, 91).

GROUP SEVEN.

Mr. Dominick first learned about a compromise of the Missouri rate litigation in the latter part of 1935, according to his recollection. The information came to him through the Journal of Commerce. He thinks there was some statement or article in that journal that gave the percentages of distribution (Dominick, II, 490).

As to when Mr. Hedge first heard of a compromise or a possible compromise of the Missouri rate litigation he cannot answer positively, but he thinks the correct answer is that they saw notices in the papers and "Mr. Dominick stated in the Journal of Commerce of New York" (Hedge, II, 518).

Mr. Greene did not know anything about the pending compromise until after it was actually made. He had read that Mr. Folonie and Mr. Street had been constituted trustees to hold a 30 per cent fund for the payment of expenses of litigation in connection with the case (Greene, II, 504).

The first time Mr. Dominick ever heard about a $100,000.00 fund or any other amount being raised in Hartford or New York was "today" (Dominick, II, 491). Mr. Hedge never until "today" heard about a fund of $100,000.00 "or any other amount" being made (Hedge, II, 518). Mr. Greene did not know anything about a fund of $100,000.00 or any other fund having been raised. He read about it in the Journal of Commerce "in the last few days" (Greene, II, 503-504).

Mr. Dominick learned that a decree had been entered in the federal court in February, 1936, in conformity with the compromise. Then they had a circular from the Actuarial Committee giving the terms of the settlement in detail (Dominick, II, 490-491).

The Actuarial Committee and Mr. Street, the chairman were handling that litigation for Messrs. Dominick, Hedge and Greene's company as well as for the other companies (Dominick, II, 491; Greene II, 504). He did not attend a meeting of Hartford or New York Insurance men in the spring of 1936, or any meeting when this 5 per cent assessment was being discussed (Greene, II, 509). Defendant's Exhibit 228 (II, 499) is a letter dated March 21, 1936, from F. M. Dominick, assistant secretary to Paul L. Haid, President, Insurance Executives Association, entitled "*Re* Missouri Impounded Premiums." It is as follows:

> "As requested in Mr. Erskine's phone call this morning we are enclosing Boston Insurance Company check for $6,097.15, which we have made payable to C. R. Street, Agent. We understand this payment represents 5% of the impounded premiums,

presumably of the Boston and Old Colony combined as of May 1, 1935.

"We understand that we will receive two checks: one payable to the Boston and another to the Old Colony, totaling $13,413.73, being 11% of the impounded premiums as of May 1st.

"We assume that you will advise us more fully later in connection with these transactions and send receipted statements.

Yours very truly,

F. M. Dominick
Assistant Secretary"

Defendant's Exhibit 228a (III, 435) is a check of Boston Insurance Company dated March 21, 1936, payable to C. R. Street, Agent, for $6,097.15. Endorsed thereon are the words, "On a/c legal expense Missouri impounded premium rate case, Boston and Old Colony Insurance Companies."

Mr. Dominick thinks they received a reply to the letter addressed to Mr. Haid (Exhibit 228) but he is not absolutely sure (Dominick, II, 500).

On March 21, 1936, Mr. Greene had a telephone call from Mr. Erskine, secretary to Mr. Haid (Greene II, 504). Mr. Greene, vice-president, told Mr. Dominick that Mr. Erskine of Mr. Haid's office called (by telephone) and asked them to send a check for 5 per cent of their impounded premiums up to a certain date, and Mr. Greene asked Mr. Dominick to send the check, without saying what it was for. Mr. Dominick did not ask Mr. Greene what it was for (Dominick, II, 491-492). Mr. Erskine asked Mr. Greene to send the check that day. Mr. Greene got the impression that Mr. Erskine would like to have the check that day or have it mailed that day (Greene, II, 509). Mr. Greene dictated a memorandum of the telephone conversation to his stenographer and undertook to put in it everything that Mr. Erskine had said. Mr. Greene gave Mr. Dominick a typed memorandum of the conversation which he had with Mr. Erskine, which memorandum is Defendant's Exhibit 226 and contains the whole of the memorandum as he dictated it (Greene, II, 504; Dominick, II, 492).

Defendant's Exhibit 226 (II, 494) is a letter to B. L. Hewett, Vice-President, Western department, dated March 21, 1936, signed by F. M. Dominick, Assistant Secretary. The letter is under the heading "Missouri Impounded Premiums." It is as follows:

"Dear Mr. Hewett:

Evidently it was extremely urgent, as we had a telephone call this morning from a Mr. Erskine of Haid's office (Insurance Executives Association). He dictated the following message:-

'To facilitate the transaction, Mr. C. R. Street, who as you know has personally directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1, we to forward two checks at once, one is for the Boston and the other is for the Old Colony, total amount of the two being $13,413.73.

'As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums may we promptly have your Boston check for $6,097.15, made payable to C. R. Street, Agent, or, if you prefer, to R. J. Folonie. In accordance with Mr. Street's suggestion please do not make your check payable either to him or to Mr. Folonie as Trustee.

'We presume you will want to charge this as legal expense.'

As requested, we have sent Boston check for $6,097.15 payable to C. R. Street, Agent—see enclosed letter. Temporarily we are charging this payment to you as a suspense item and when we know more about it, can adjust the transaction.

I've made a rough stab to arrive at the $13,413.73 that we are to receive for the Boston and Old Colony combined. This amount represents 11% of $121,943, which is fairly close to the amounts which your July 1935 Accounts show as deposited with the Missouri Custodian. It doesn't check out perfectly and I suppose there will be an accounting later to straighten this out.

Yours very truly,

F. M. Dominick
Assistant Secretary"

The Executives Association never before came into the picture in this litigation that Mr. Greene knows of (Greene, II, 504). The quoted portion of the letter written by Mr. Dominick does not contain all of the memorandum that was made by Mr. Greene. The memorandum showed the amounts of the check which they were asked to send and the amount of the checks which they were to receive, and Mr. Dominick had written on that memorandum to whom their check was to be made payable, and then he wrote Defendant's Exhibit 226 addressed to Mr. Hewett, Vice-President and Manager of the Western department. Mr. Dominick wanted to give Mr. Hewett the information that was set out in the memorandum. Mr. Hewett had not asked for the information (Dominick, II, 492-493). Defendant's Exhibit 229 (II, 507) is the original memorandum (Greene, II, 506). It is as follows:

> "To facilitate the transaction, Mr. C. R. Street, who as you know has personally directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1, we to forward two checks at once, one is for the Boston and the other is for the Old Colony, total amount of the two being $13,413.73.
>
> "As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums, may we promptly have your Boston check for $6,097.15, made payable to C. R. Street, Agent, or, if you prefer, to R. J. Folonie. In accordance with Mr. Street's suggestion, please do not make your check payable either to him or to Mr. Folonie as Trustee.
>
> "We presume you will want to charge this as legal expense."

Attached is another original memorandum in the handwriting of Mr. Greene. Mr. Dominick wrote the words, "Street, Agt." and "Haid Ins. Exc" and he wrote "Ck" and he wrote "5%." Mr. Greene wrote the words, "Erskine Rate 11%." The word "Receive" is Mr. Dominick's writing, and the figures "$6,097.15" are the amount of the check (Greene, II, 508).

Mr. Greene knew the information should be passed on to Mr. Hewett, and Mr. Dominick passed it on. Mr.

Greene knew it was important for Mr. Hewett to know the nature of it. He did not find out from Mr. Erskine so he could tell Mr. Hewett what it was all about, because they had every confidence in the Haid office and in Mr. Erskine, in the demand of 5 per cent (Greene, II, 505).

Mr. Greene first learned about this transaction on the telephone the morning of the memorandum. He never received any other information and has not endeavored to find out (Greene, II, 509). There was no other conversation between Mr. Greene and Mr. Dominick at the time when Mr. Greene delivered the memorandum as to what the transaction could possibly be, except for expenses. Mr. Dominick did not ask Mr. Greene if he understood what it was about, and after that Mr. Greene did not discuss this transaction with Mr. Dominick or with any other person in his office to determine in his own mind what it was about. It did not come to his attention that from time to time Mr. Dominick wrote to Mr. Street (Greene, II, 508). Mr. Greene gave Mr. Dominick that memorandum which is the only information Mr. Dominick has. When Mr. Dominick wrote to Mr. Hewett he did not know the transaction referred to, other than that it related to Missouri litigation expense. The nature of the transaction relating to the Missouri rate litigation was not known to him at the time he prepared the checks and dictated the memorandum. He did not ask Mr. Greene if Mr. Greene knew what it was. He was undertaking to pass along all the information they had to Mr. Hewett (Dominick, II, 495-496).

Mr. Dominick did not at that time realize that there was something vague and mysterious about the whole matter. The thought did not suggest itself to him at the time that he dictated the memorandum—not the slightest; it did not enter his mind at all. "It says 'legal expenses had to be paid,' and we just jumped at conclusions." The inquiry as to the nature of the transaction in which he was sending out these checks did not come to him at all, not in the slightest. Still he did not know, and does not know today, what he had in mind. He only jumped at conclusions as to what would develop later (Dominick, II, 496).

Mr. Erskine dictated the statement "We presume you will want to charge this as legal expense." So far as Mr. Dominick knows, that is all of the conversation

between Mr. Erskine and Mr. Greene. He does not recall anything that Mr. Greene said to him as to why they should be assessed 5 per cent out of this 11 per cent dividend and return back 5 per cent of what they had already gotten. That inquiry did not come into Mr. Dominick's mind. He did not know what it was for, and had no curiosity to find out (Dominick, II, 497).

The statement in the letter, "Evidently it was extremely urgent," was simply because they wanted the checks mailed that day. Mr. Erskine did not tell Mr. Dominick that it was extremely urgent. The message speaks for itself. Mr. Dominick does not know what transaction is referred to in the letter by the expression, "To facilitate the transaction." He does not think Mr. Greene knew (Dominick, II, 495).

Mr. Erskine used the words "To facilitate the transaction." It never occurred to Mr. Greene to ask what transaction, more than the case of Missouri. He knew it was the case of Missouri. He did not consider that phase of it, except for attorneys' fees. The 30 per cent was not mentioned (Greene, II, 505). All Erskine referred to was our companies paying 5 per cent and in return they would receive a check from the committee for 11 per cent. Mr. Erskine did not tell what transaction they were facilitating any more than that, and Mr. Greene did not know what transaction he was facilitating. He did not ask Mr. Erskine; he had no occasion to (Greene, II, 504).

These companies received a check for 11 per cent of their impounded premiums up to a certain date. Mr. Dominick's recollection is that the check was from the trustees. The trustees were to be paid 30 per cent for the purpose of paying the expenses of the litigation, and it was an assumption that when the companies received the 11 per cent that the 30 per cent was more than adequate to pay all of the expenses. Mr. Dominick gathered that (Dominick, II, 491). Mr. Greene presumes that he had read of the 30 per cent before he had this telephone conversation with Mr. Erskine. That is the only way that he knew about it. It did not occur to him then and did not afterward occur to him as a most strange transaction (Greene, II, 505). They were asked to put out $6,000.00 for expenses of the committee. Mr. Greene presumes that he knew at the time that 30 per cent had been placed in the hands of Folonie and Street as trus-

tees for the payment of expenses, but only through reading the report (Greene, II, 505). Prior to the telephone conversation with Mr. Erskine in March, 1936, Mr. Greene had never had anything whatever to do with the Missouri rate litigation, its progress, how it was being handled, or what was being done in it (Greene, II, 509).

The part of the letter about Mr. Street having to immediately meet expenses which required approximately 5 per cent of the impounded premiums, and the check was not to be payable either to Street or Folonie as trustees, caused no inquiry in Mr. Dominick's mind as to what was going on. He had no curiosity about it but he undertook to find out—they wrote Mr. Street for a voucher for the payment on several occasions. He thinks he wrote two or three times and they got a receipt for each company. They did not inclose these letters in the file furnished to the district attorney when the records were requested. There was no reason at all for not doing it, except it was not in accordance with the request of the district attorney. He said what he wanted (Dominick, II, 496-497). The next letter after Exhibit 228 that Mr. Dominick could find was a letter of June. It is his impression that there is a letter missing. He thought he had written Mr. Street previous to the letter of June 4th. It is presumably at the home office (Dominick, II, 510). He wrote Mr. Street two or three times (Dominick, II, 498).

Defendant's Exhibit 231 (II, 512) is a letter from C. R. Street, dated April 13, 1936, to F. M. Dominick, Assistant Secretary. It is as follows:

> "I acknowledge the receipt from you of check for $6,097.15 in payment of Boston and Old Colony share of Missouri litigation expenses.
>
> Full report on Missouri will be made at the White Sulphur meeting next week, which President Hedge will probably attend."

The letter (Exhibit 231) must have come to Mr. Hedge's attention. His initials mean it was referred to him and "Chis" is short for Chisholm, the secretary's name, and is in Mr. Hedge's handwriting. Mr. Hedge never at any time got a report from Mr. Street concerning this matter (Hedge, II, 518). Mr. Hedge absolutely never even discussed the case with Mr. Street at any time (Hedge, II, 518). He does not know whether a

full report on Missouri was made at the White Sulphur meeting the week following April 13th. He did not attend the meeting at that time (Hedge, II, 518). Mr. Dominick does not think that Mr. Hedge attended that meeting. Mr. Dominick's recollection is refreshed by the letter of June 4, 1936 (Dominick, II, 513).

Defendant's Exhibit 230 (II, 510-511) is as follows:

"FMD/MMW June 4, 1936.

Mr. C. R. Street, Vice President,
Great American Insurance Company,
310 South Michigan Avenue,
Chicago, Illinois.

Dear Sir:

Re: Missouri Impounded Premiums

Referring to your letter of April 13th, Mr. Hedge did not attend the White Sulphur meeting and, therefore, have heard nothing regarding the full report on the Missouri rate situation. We are not so much interested in the report as we are in obtaining a proper receipt for the $6,097.15 paid to you as Trustee on account of certain legal expenses.

Our Massachusetts Insurance Law states that: 'No domestic company shall make any disbursements of $25.00 or more.....unless the same be evidenced by a voucher signed by or on behalf of the person receiving the money and correctly describing the consideration for the payment; and if the same be for services and disbursements, setting forth the services rendered by an itemized statement of the disbursements made; ..... or if such a voucher cannot be obtained by an affidavit stating the reason for not obtaining such voucher and setting forth the particulars above mentioned.'

Will you please see that we are furnished with proper vouchers or affidavits for the:-

Boston Insurance Company	$5,250.55
Old Colony Insurance Company	846.60
Total	$6,097.15

Yours very truly,

F. M. Dominick
Assistant Secretary"

Mr. Hedge never endeavored to get such a report other than the correspondence which has been identified, for the reason that he expected ultimately there would be a complete and final accounting to the last nickel. It has never come, as yet. He does not know whether the controversy over the impounded fund is over yet. His companies have a large amount of money still in the hands of the court that has not been distributed (Hedge, II, 518-519).

Defendant's Exhibit 232 (II, 514) is a letter dated June 8, 1936, from C. R. Street to F. M. Dominick, Assistant Secretary. It is as follows:

> "As requested in yours of the 4th, am enclosing herewith vouchers for the Boston and Old Colony evidencing payments to me as Agent for expenses in the Missouri case."

Defendant's Exhibit 227 (II, 501) dated March 25, 1936, is as follows:

> "Received of the Old Colony Insurance Company the sum of $846.60 in payment of that Company's assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri.
>
> C. R. Street
> Agent for companies involved in said litigation."

Defendant's Exhibit 227-A (II, 502) dated March 25, 1936, is as follows:

> "March 25, 1936.
>
> Received of the Boston Insurance Company the sum of $5,250.55 in payment of that Company's assessment for attorneys' fees and other expenses in connection with pending rate litigation in the State of Missouri.
>
> C. R. Street
> Agent for companies involved in said litigation."

The receipt was dated March 25, 1936, but Mr. Dominick thinks it was received some time after that (Dominick, II, 500). The receipt to which Mr. Dominick refers is the voucher of March 25, 1936, a letter from Mr.

Street (Dominick, II, 498). The receipt was received probably two months after its date and in the meantime Mr. Dominick had written two or three letters to comply with the Massachusetts insurance law. He thinks they went unanswered. Mr. Dominick explained the use of the word "letter" by stating that the receipt is on a letterhead, but it is a receipt. It is the only reply Mr. Dominick got from Mr. Street (Dominick, II, 503). When they got this receipt they made no further efforts to find out to whom the fees were paid and what portion was attorneys' fees and what was other expenses. It went to legal expenses, but they never learned from Mr. Street how much was attorneys' fees and how much was other expenses and never learned to whom it was paid, except the story through the press (Dominick, II, 503). Mr. Dominick considered that the letter (Exhibit 232) and those vouchers together constituted a sufficient explanation as to these fees. He did not enter them on his books in that manner. He entered them on his books when the checks were drawn as "cash paid out" and put what it was for to the best of their knowledge at the time. The entry "on account of legal expense, Missouri impounded premium rate case" remained on the books after Mr. Dominick received Mr. Street's vouchers and letter (Dominick, II, 515).

Mr. Dominick had to do with the making of his companies' income tax return for the year 1936, and claimed credit for this disbursement. The examiner disallowed it, but the case has not been closed. They are still waiting for a hearing. Mr. Dominick believes his reason was in his report of the audit of their return. After it was disallowed he made no endeavor to ascertain the exact nature of the legal expenses that it covered. He believes that they submitted photostatic copies of these receipts which Mr. Street gave them as evidence of a payment for legal expenses. He has not personally done anything to try to establish this claim for allowance other than to submit the photostatic copies of the Street letters and vouchers. Mr. Dominick is not handling the income tax matter for his company. He does the detail work. If somebody is making an income tax investigation and they call on him for anything in his possession, he produces it. He does not believe he has anything further to do with it than that, and to talk with the examiner if there is any question—if he wants to see the books or wants to know what that means. It is

his function to furnish what he is asked for (Dominick, II, 515-517).

GROUP EIGHT.

The Caledonian Insurance Company is a Scottish company. It had no affiliate in the federal cases. Its subsidiary, the Caledonian-American, was in the state case (R. Clark, II, 415). This company had a suit in the federal court and was involved with the other companies. It had impounded premiums as a result of that litigation (R. Clark, II, 416).

In the Caledonian Insurance Company they looked upon the Subscribers Actuarial Committee as the representatives of the company over the period of time that the litigation was involved (R. Clark, II, 416). The United States manager knew that Mr. Street was Chairman of the Subscribers Actuarial Committee in Chicago (R. Clark, II, 416, 436). They had been handling this rate litigation in Missouri in behalf of his company, and whatever Mr. Street wanted to do was all right with Mr. Clark (R. Clark, II, 436). The interest of this company in this impounded fund was really very, very negligible (R. Clark, II, 438). At the time of this $2,000.00 payment this group had a case pending in the state court unsettled and unadjusted (R. Clark, II, 440).

Defendant's Exhibit 216 (II, 433) is an acknowledgment of receipt from the Caledonian Insurance Company of "legal expenses re Missouri rate case (5% impounded premiums)," signed "C. R. Street, Chairman."

The $495.50 check was just made to Mr. Street, not as trustee, agent or attorney, with the request that he sign the receipt as chairman, which he did (R. Clark, II, 435).

The check for $1,090.12 is 11 per cent of this group's impoundments to May 1, 1935. It did not occur to Mr. Clark to question why Mr. Street did not just send 6 per cent to begin with. Mr. Clark does not offhand have any independent memory as to whether the $1,090.12 check was that of Street and Folonie, the trustees. Presumably, the books would show. It shows every transaction that had anything to do with it some place (R. Clark, II, 434-435). Mr. Street returned his check for $2,000.00 which had been advanced (in 1935). He never made any explanation of what the 5 per cent was for. No one ever explained that to Mr. Clark. It was paid out for legal

expenses. They expected to have an accounting eventually which would explain it (R. Clark, II, 434). (See note explaining Caledonian contribution to the 5 per cent assessment following the list of checks composing the total assessment.)

Mr. Clark thinks his first recollection of the 80-20 compromise and of the 30 per cent set aside as a fund for legal expenses was in the Fall, as borne out by the correspondence when they wrote and said they had heard there was a distribution of funds and asked to participate. Mr. Clark was in Europe in the spring of 1936. The correspondence supports everything that transpired after that (R. Clark, II, 425). Mr. Clark has since heard of the compromise. He would assume his first intimation was in the Fall of 1936. His company may have received a notice from the Actuarial Committee of the fact that the federal court made an order distributing the funds pursuant to a compromise, but it never came to his attention. When he heard what it was, he was quite satisfied with the basis on which the compromise was rendered. That basis was the 80-20, 30 per cent of which was allocated for expense, and 50 per cent to the companies; 20 per cent for the policyholders (R. Clark, II, 424).

Mr. Clark first received knowledge of the terms of the settlement, that is, 50 per cent to the companies, 20 per cent to the policyholders and 30 per cent for expenses about the time that he received the receipt from Mr. Street (R. Clark, II, 434). When Mr. Clark heard of the 30 per cent it was set aside as a fund for legal expenses. He could not say whether it was to cover all legal expenses. He did not know what the terms were, except that it was set aside for state expenses (R. Clark, II, 425).

The check was made to Mr. Street because his letter (Defendant's Exhibit 212, II, 428) requested it, and the letter was sent to the accounting department to comply with his request, at the same time requesting that the voucher be signed by him as chairman of the committee. Mr. Clark did not restrict Mr. Street at all in the use of the $495.50 (R. Clark, II, 436). When the Caledonian paid the 5 per cent of impounded premiums to Mr. Street on November 25, 1936, it was described as representing 5 per cent of the company's proportion of advanced fees. That is what

witness understood it was and in the voucher it was described as "legal expenses *re* Missouri rate case, 5% impounded premiums" and signed by Mr. Street as Chairman (R. Clark, II, 437). Mr. Clark understood that Mr. Street was to use the $495.00 for legal expenses in connection with the case and account to them in the final analysis. He understood from the letter that if he wanted any details he could get them either from Mr. Haid or from Mr. Street and he was not interested in getting them and did not ask either one of those gentlemen for them. Neither of them ever wrote him a letter about it (R. Clark, II, 435). Mr. Clark did not report the $495.00 payment, except that it appears in the records to whom the check is drawn and there is a transcript of the date of the check, but no explanation (R. Clark, II, 436). It was not until Mr. Clark was in the district office, not being concerned because of their money or position, that he realized that they had not gotten it all back. They thought they were one cent ahead when they found out that the two were conflicting. They thought they were fully adjusted and repaid (R. Clark, II, 440). So far as Mr. Clark knows neither he nor his company nor any officer thereof ever by letter, telegraph, telephone, or personal conversation, asked Mr. Street to do anything for them in that litigation and never authorized or requested Mr. Street, and never knew Mr. Street was paying out any money whatever to influence any public official or otherwise to bring about this settlement (R. Clark, II, 438).

GROUP NINE.

Mr. Gilliams very likely knew that the Missouri fire rate litigation was compromised through reading the Journal of Commerce and insurance magazines. He undoubtedly must have known it (Gilliams, III, 110). He supposes that he read of the break-up of the impounded premium fund at the time, 20 per cent to the policyholders, 30 per cent to trustees for the payment of legal expenses, and 50 per cent outright to the companies; but it was no matter of concern to him personally, and it made no deep impression. He did not handle the bookkeeping transactions nor have anything to do with them, as the remittances came in under the decree. He was not advised of the fact that substantially 50 per cent came in from the custodian. He did not know anything about the 11 per cent (Gilliams, III, 111). He did not

know that a fund of $100,000.00 had been raised in connection with the settlement. He does not think he heard of it until this morning (Gilliams, III, 111). He had no knowledge or information whatever concerning the negotiations for the compromise before it was effected (Gilliams, III, 111).

Defendant's Exhibit 272 (III, 113) is a requisition of Camden Fire Insurance Association dated March 23, 1936, for a check drawn to the order of C. R. Street, agent, for $2,301.59 in payment of legal expenses in connection with Missouri impounded premiums.

Mr. Gilliams gave a verbal request for the check issued on March 23, 1936. He did not know at all what percentage it was. Mr. Paul Haid telephoned Mr. Gilliams stating that he had a check in hand in connection with the Missouri litigation and was putting it in the mail, and would Mr. Gilliams please return him a check. Mr. Gilliams does not remember whether it was to Street and Folonie, and he scribbled the amounts down on a pencil memorandum and handed them to assistant secretary Makin who drew the check for legal expenses (Gilliams, III, 111). He did not undertake to find out whether these legal expenses were necessary or had been actually expended or anything else. He would be inclined to do the same thing tomorrow on Mr. Haid's request in a matter of litigation. He thinks he would do so after this Missouri affair. He has perfect confidence in Mr. Haid (Gilliams, III, 112).

Mr. Gilliams did not have the active management and control of the fire rate litigation so far as it was handled out of his office. Mr. Berry Truscott handled it. He is in the Cooper Hospital at Camden with typhoid fever, and has been there for some time. He was taken last Tuesday from up in Pennsylvania and was brought home yesterday (Gilliams, III, 110). Prior to the time Mr. Gilliams took this action in the fire rate litigation, it had been handled by Mr. Truscott (Gilliams, III, 112). Mr. Gilliams thinks the reason that he, instead of Mr. Truscott, handled it at this time was that Paul Haid and he were associated together, traveled for a small Philadelphia insurance company. Whenever "Paul" has anything to take up with the Camden he has always taken it up with Mr. Gilliams, because years ago they were old and close personal friends. Mr. Gilliams cannot remember now whether Mr. Truscott was away on a va-

cation that he usually takes in February, but Mr. Gilliams has known Mr. Haid personally for thirty years (Gilliams, III, 112).

GROUP TEN.

The Lincoln Fire Insurance Company absorbed the Chicago Fire and Marine Insurance Company and the Presidential Fire and Marine Insurance Company at the close of 1931. Both the Chicago Fire and Marine Insurance Company and the Presidential Fire and Marine Insurance Company then had impounded premiums up to the time of this merger. The Lincoln Fire Insurance Company had no impoundments before, and now only has that impoundment because it absorbed those two companies and took over their liabilities and assets. The assets would include any rights that they had in this impoundment (Tamblyn, II, 299-300). The Lincoln Fire Insurance Company was not doing any business at that time in Missouri. The other two companies were absorbed by the Lincoln. They may have had a little business in Missouri under the name of the Chicago Fire and Marine Department (Tamblyn, II, 303). When the Lincoln absorbed these two companies they found themselves with the questionable asset of about $13,000.00 and the handling of it was in the hands of the Actuarial Committee in Chicago, a committee headed by Mr. Street. Mr. Tamblyn, representing those companies, determined to follow the leaders and do whatever they did. He did whatever he was instructed to do, hoping some money would come back sometime (Tamblyn, II, 302). Mr. Tamblyn knew the terms of the settlement in a general way. He understood that part of the 30 per cent might ultimately come to the companies (Tamblyn, II, 302).

Mr. Erskine came to see Mr. Tamblyn and brought a check for 11 per cent of the impounded premiums which Mr. Tamblyn understood was a part of the 30 per cent and told Mr. Tamblyn that they wanted a check for 5 per cent of their impounded premiums to the order of Mr. Street for the purposes that the attorneys would decide (Tamblyn, II, 302). The 11 per cent was probably the first payment from the 30 per cent; that is what Mr. Tamblyn understood (Tamblyn, II, 302-303). Mr. Erskine asked that the check be drawn to Mr. Street, attorney, and the one question that Mr. Tamblyn remembers that he asked was whether that was the

same proportion of the impounded premiums that everybody was paying and if so he would authorize the check, which he did and then gave Mr. Erskine the check. As he recalls it, Mr. Erskine took it with him. Mr. Tamblyn intended Mr. Street to take that sum and use it as he saw fit (Tamblyn, II, 302). As Mr. Tamblyn recalls, the first question he asked Mr. Erskine was whether all of the companies were paying that 5 per cent, and Mr. Erskine said they were; so Mr. Tamblyn called in the accountant, the secretary of his company, and authorized him to draw the check and to either hand it or send it to Mr. Erskine (Tamblyn, II, 302). Mr. Tamblyn did not question further as to why he should pay in 5 per cent, because he completely trusted the committee and felt there was some reason why they wanted it that way, and if all the other companies were willing to do it he thought he would do it. He was new in this situation. He was a stepchild (Tamblyn, II, 303). He thought that the 11 per cent was a part of the 30 per cent. It might be a reasonable deduction that the 5 per cent which he gave back to Mr. Street was a part of the 11 per cent. Therefore the 5 per cent that went back to Mr. Street was a part of the 30 per cent for expenses. Mr. Tamblyn assumed that they wanted it that particular way for some purposes known to the committee, and he trusted them (Tamblyn, II, 303). By giving them a check Mr. Tamblyn meant to let them go ahead and do as they pleased (Tamblyn, II, 303). "We in the factory association, whenever we were in the group in a small company, we do what they do—follow along." Mr. Tamblyn was "following" (Tamblyn, II, 304).

Defendant's Exhibit 197 (II, 301) is a check of Lincoln Fire Insurance Company of New York, dated April 15, 1936, payable to the order of C. R. Street, Agent, for $694.52. There is a notation on the check as follows: "This voucher check is in full settlement of the following invoices:

"*Re:* Mo. impounded prems.	
Services & Legal Expense--Presidential	$177.33
Chicago F. & M.	517.19
	$694.52"

Mr. Tamblyn was asked how he happened to put in the notation on the front of the check as to what the

payment was for, and he answered that he probably called in Mr. Becker, head of their accounting department, when Mr. Erskine was there, and told Becker to word it as best he could and that is the way he worded it. Mr. Tamblyn's impression is that Mr. Erskine suggested it was for legal expenses (Tamblyn, II, 303-304).

When asked if he had introduced all the written records he had about his office connected with the 5 per cent payment, Mr. Tamblyn said that he had instructed the head of his companies' accounting department and the file department to fish out everything they had, and he assumes that the exhibits produced constitute everything. So far as he knows, it is every letter and word they had (Tamblyn, II, 304). Most certainly neither Mr. Tamblyn nor anyone in his company authorized Mr. Street or knew that any part of this money was going to be used to bribe anybody or to procure any consent to this settlement order; not the slightest intimation (Tamblyn, II, 304).

GROUP ELEVEN.

These companies paid a check to C. R. Street as chairman of the Subscribers Actuarial Committee (Koeckert, I, 505). The entry on the ledger, under the account for "legal expense" (Defendant's Exhibit 114, I, 528) as of April 21, 1936, was as follows: "To cash C. R. Street Agt., $8,281.67." On the cash book (Defendant's Exhibit 113, I, 528) as of the same date, the entry was as follows: "Legal Exp. C. R. Street Agent $8,281.67."

These companies got a dividend of 11 per cent. Mr. Koeckert knew it came out of the 30 per cent (Koeckert, I, 518). Mr. Koeckert learned that the compromise went through (Koeckert, I, 517).

After the settlement went through Mr. Koeckert knew that a federal court decree followed, and be became familiar with the terms of that compromise. He knew that 20 per cent was to go to the policyholders, 50 per cent to the companies and that 30 per cent was reserved in the hands of Mr. Street and Mr. Folonie as trustees to pay further and extraordinary expenses. He had no idea what the expenses were. He presumes a greater portion was attorneys' fees (Koeckert, I, 517-518).

This group's impounded funds in 1935 and 1936 were $315,633.52. Mr. Koeckert got back 50 per cent, or $157,-

500.00 and later got another 11 per cent back, which was Thirty-four thousand odd dollars, a total of $192,150.00 (Koeckert, I, 525-526). When he had the impression that he might be getting some money back (See "XI, The Meeting In Hartford In 1935") after he made the contribution, that confidence was justified. He got back $192,000.00 whether he got it back as so-called attorneys' fees or as cash, he got back every dollar that he paid as part of the settlement, and the total amount that he paid to Mr. Street was only about $15,781.67 out of the $192,000.00 that he got back; so he got back every dollar of the contribution that he made. Since then he has returned it under the recent order of court. It is now in litigation (Koeckert, I, 526).

Witness does not know why Mr. Haid told him to charge the check to legal fees, and he did not ask Mr. Haid. Mr. Haid came to witness without his asking, and said to charge this to legal fees, witness thinks, over the telephone. He thinks Mr. Haid called him. It was charged to legal fees about a year later. Witness has not the dates quite right. Witness does not think Mr. Haid concerned himself about how the first charge was made. Mr. Haid's statement was for the second check. Witness did not charge the first one to legal fees and he has not changed the entry on that to this day. It never has been transferred to legal fees (Koeckert, I, 507).

On the very day that they got the dividend out of the 30 per cent, they got a call to deliver back 5 per cent to C. R. Street, Agent. If Mr. Koeckert recalls, he got that information through Mr. Haid by telephone. Mr. Haid said there was going to be a further dividend or contribution out of the 30 per cent expense item. That was quite pleasing to witness, but he would have to give back a total of 5 per cent, as he remembers it. So that, while he got 11 per cent, he had to pay 5 per cent. He netted 6 per cent (Koeckert, I, 518). It is Mr. Koeckert's recollection that Mr. Haid gave the amounts over the telephone in regard to the 5 per cent (Haid, I, 522).

Mr. Koeckert does not think Mr. Haid told him what it (11 per cent dividend) was for. He thinks Mr. Haid said it was just some distribution Mr. Street was making to the companies. The 5 per cent would go to Mr. Street as a further 5 per cent of their impounded premiums that Mr. Street had to have, the same kind of

expenses had in the first instance. Mr. Koeckert did not know; he supposed the 30 per cent would take care of that, but he naturally would feel that if he could get in an extra dividend he was very happy about it. He should have known there was money in the 30 per cent to pay it, but he did not think much about it (Koeckert, I, 518-519). There was no letter transmitting the 11 per cent (Koeckert, I, 522).

Mr. Koeckert knew the amount of his share of the impounded premiums, and thinks he could estimate the share of all of them. He knew there was over nine million dollars and that 30 per cent was in excess of $2,500,000.00 (Koeckert, I, 518). He did not give it any thought, but he assumed that the other companies were paying Mr. Street 5 per cent of the impounded funds for additional expenses. He did not know that they would amount to $450,000.00, or more. He knew there was over nine million dollars; so he did know it. What he means is, he could have known it if he had stopped to calculate it. He had the means of knowing it, but did not stop to calculate it (Koeckert, I, 519).

Mr. Koeckert did not think it most unusual that he would get a check from the trustees of this fund so long as Mr. Street handled it. He turned it over to Mr. Street (Koeckert, I, 519).

Mr. Koeckert considered it a fortunate settlement, and was glad the case was out of the way (Koeckert, I, 518). Anything Mr. Street would have asked, Mr. Koeckert would have given him without any explanation. He could have had fifty times the money that he asked Mr. Koeckert to pay. Mr. Street was Mr. Koeckert's employer for years and, in Mr. Koeckert's opinion, was a great man. Mr. Koeckert would have given him anything he asked for, including the cash box. That is how Mr. Koeckert felt toward him (Koeckert, I, 514).

Mr. Koeckert first met Mr. Street in 1904. Mr. Koeckert was born in '79 and was twenty-five years old at the time. Mr. Street invited him to come to Chicago in 1908 when he was twenty-nine years old. Before that, Mr. Koeckert had traveled in Indiana for Mr. Street's company (Koeckert, I, 525). Mr. Koeckert was making $2,700.00 in 1904 when he first met Mr. Street (Koeckert, I, 525). "I was a boy in Indiana without much future, and he brings me to Chicago, and he puts me in a position where I can get on * * * make the grade as it

were, and I believed in everything he told me. Now in later years as I became a competitor of his I had to and I did take certain things from Mr. Street, * * * it had nothing to do with Missouri what I am telling you, but things—he thought my conduct was not what it should be. But always he would back and say, 'My boy, I knew you were right,' and that only added to my affection for the man. I wouldn't have it any other way" (Koeckert, I, 522). Mr. Koeckert left as Mr. Street's subordinate in 1912. He was under Mr. Street for four years in Chicago and then went with the Western department of another company of the same group in Chicago (Koeckert, I, 525).

Mr. Koeckert required complete reports from all of the trusted agents that worked for him. The fact that he trusted them would not excuse them for one minute from making a complete report for every dollar they handled (Koeckert, I, 524). There never was a time when Mr. Koeckert felt that he could go to his board of directors or his home office and tell them that he had spent the money and they would have to trust him and, if they did not trust him, he was offended and hurt. He would expect some very severe treatment if he did, and if he had handled money from Mr. Street's companies he would not have expected to get by with that. Never for a minute would he expect to excuse himself in Mr. Street's eyes by telling him he expected Mr. Street to trust him (Koeckert, I, 524-525). Mr. Koeckert thinks he read something in the press like a statement that the money that went to Mr. Street went for corrupt purposes to Tom Pendergast. Mr. Koeckert did not go out to Kansas City, but he thinks he must believe it to be a fact from what he has read and heard. He does not think he knows that he never got a dollar of the money back that he advanced, or that it went to corrupt Tom Pendergast (Koeckert, I, 527-528). He cannot say that he knows it went into Tom Pendergast's hands (Koeckert, I, 528). Mr. Koeckert read very little of the newspaper accounts about the Pendergast and O'Malley convictions (Koeckert, I, 527).

Mr. Koeckert is sure they took credit for it in their income tax. The tax departments have called on them. Mr. Koeckert does not know what that conversation was, and does not remember that they definitely disallowed it. Somebody was looking into the matter. Mr. Koeckert

does not know that he told them that it was legal fees. He does not think, if it were entered as "Local Board expense" and "National Board expense," that the department would find it as legal expense fees in the income tax statements.

Q. You didn't get credit on your income tax?

A. Well, that is probably something we lost then.

Q. Well, that is that?

A. Well, probably so * * *. You are aware, aren't you, we do get credit even as National Board and Local on credit?

Q. I am not aware of anything regarding this company except what I see on record.

A. We do get credit for it just the same (Koeckert, I, 507-508).

GROUP TWELVE.

This group is known as "The America-Fore" (Haid, II, 373). The office of the company is at 60 Maiden Lane (Culver, III, 402). They allocate their office expense. There is a certain supervisory allocation on a percentage basis which is an arbitrary figure set by the New York officials (Henne, I, 68-69). Mr. Moeckel knows that the Chicago office of his company handled the rate litigation through the Subscribers Actuarial Committee and that Mr. Charles R. Street had charge of it (Moeckel, II, 305). Mr. Henne thinks his Western office received its portion of the 11 per cent. His office did not pay back the 5 per cent. Mr. Henne thinks that was done through the New York office and subsequently debited to him (Henne, I, 49-50).

Mr. Moeckel was not the official who had charge of the rate litigation so far as this company is concerned. He thinks that was handled entirely in the Chicago office. His information (regarding the fire rate litigation) came from the Chicago office (Moeckel, II, 305).

Mr. Henne does not know whether the ordinary attorneys' fees paid prior to the $15,000.00 and the $22,323.12 disbursements (Made in 1935 and 1936) had been carried in calculating the underwriting results in Missouri (Henne, I, 62).

This company has a Western department of which Mr. Henne was manager at that time. So far as under-

writing is concerned, the Western department and the home office department are treated like they are two insurance companies, for the purpose of underwriting only. But they consolidate every year so that there can be one income tax return made for the whole company. If there is an expenditure made by the home office that really arises out of business which was done in the states embraced in the Western department, there has to be a transfer so that the expenses of the business in Mr. Henne's states will be reflected on his books (Henne, I, 57).

After entry of the decree the company received from the trustees a check which witness thinks was in the amount of 11 per cent of the impounded funds, being a part of the 30 per cent mentioned, was allocated for the payment of expenses. At the time it was received Mr. Henne did not receive any correspondence from Mr. Street in which he asked Mr. Henne to return 5 per cent to him as agent. Mr. Henne knows that the companies were called upon to pay back to Mr. Street 5 per cent which was done in this company's New York office (Henne, I, 49). No funds have been called for by Mr. Street for the purpose of effecting or bringing about the compromise or settlement before it was an accomplished fact that Mr. Henne knows of (Henne, I, 25).

Defendant's Exhibit 199 (II, 316) is a letter from the treasurer of the Continental group to Mr. Paul L. Haid, President of the Insurance Executives Association, which letter is dated March 21, 1936, and is as follows:

> "As requested in your memorandum to Chairman Sturm, we are attaching check in the amount of $22,323.12 to the order of C. R. Street, Agent."

Mr. Moeckel does not seem to see such a memorandum as the one mentioned in his letter (Defendant's Exhibit 199, Vol. II, 316) by the words "as requested in your memorandum to chairman Sturm" (Moeckel, II, 314-315). Mr. Sturm is not living. Mr. Moeckel thinks he died sometime at the end of December, 1936 (Moeckel, II, 317).

Mr. Culver did not attend the 1936 meeting in Mr. Haid's office (Culver, III, 405). He was not in New York in March, 1936 (Culver, III, 409). After he got back home from the west the results of such a meeting were reported to him either by Mr. Emes or by Mr.

Moeckel (Culver, III, 405). He would assume that it was probably Mr. Emes that told him about the $22,000.00 check (Culver, III, 413). The only information Mr. Culver has was given to him verbally when he got back to New York—that there had been a further payment of the amount shown by the twenty-two odd thousand dollar check (Defendant's Exhibit 327, III, 410) (Culver, III, 409). He knows nothing about the circumstances under which it was written. He never reported the payment of either the $15,000.00 or $22,000.00 check to his board of directors, and he never made any report to them about the settlement of the case (Culver, III, 413). He does not remember whether the basis of the settlement was 90-10 or 80-20 (Culver, III, 413-414).

Mr. Culver understands that the check (Defendant's Exhibit 327) represents enough more money, plus the $15,000.00, to make the 5 per cent of his company's impounded premiums to May 1, 1935 (Culver, III, 409). He does not know exactly the amount of his company's impoundments in the Missouri rate case. He has always thought they were around $750,000.00, more or less (Culver, III, 398).

Mr. Henne first learned of the negotiations after they were completed, approximately in 1935. He thinks the possibility of the settlement being concluded was along about February, 1935, when he first heard of it, and he does not know whether an agreement had been reached at that time (Henne, I, 24). Neither Mr. Street nor any other person at any time before or after the compromise, discussed with Mr. Henne, as an official of the Continental, the settlement or proposed settlement. To this day all he knows about it is what he saw in the written document (Henne, I, 26).

Mr. Henne knew when he got advice to the effect that the settlement shows that some 30 per cent of the impounded premiums had been allocated for the payment of attorneys' fees. He cannot recall the date, but it was shortly after the settlement was made (Henne, I, 26). Prior to the time the compromise was signed, he knew not a word about its terms or provisions (Henne, I, 25).

Defendant's Exhibit 328 (III, 412) is a requisition of the Continental Insurance Company of New York dated March 21, 1936, for a check to the order of C. R. Street, Agent, for $22,323.12 in payment of additional legal ex-

penses in connection with "Missouri Impounded Prems." with a direction to charge "Atty. fees."

Defendant's Exhibit 200 (II, 318) is a letter dated March 21, 1936, from C. E. Swan to B. W. Jones, Assistant Auditor of the Chicago office from the treasurer of these companies. It is as follows:

> "We have today received checks signed by R. G. Folonie and C. R. Street, Trustees, to order of our companies as follows:
>
> | | |
> |---|---|
> | Continental | $31,518.13 |
> | American Eagle | 5,192.61 |
> | Fidelity-Phenix | 37,036.10 |
> | First American | 2,867.80 |
> | Niagara | 5,496.24 |
> | Total | $82,110.88 |
>
> We have credited your office with these amounts as remittance to Home Office as we understand they are credits to the Missouri Impounded Premium Account and proper credit entries should be made at your office. Attached is copy of slip received with the checks.
>
> Payment was also made by us to C. R. Street, Agent, of $22,323.12 and charged to legal expense. This charge, together with similar item of $15,000. paid by us last year, will be referred to president Culver upon his return for possible adjustment with your office.
>
> Kindly acknowledge receipt."

Mr. Moeckel received a copy of the above letter (Moeckel, II, 317). This letter is the first knowledge that Mr. Moeckel had that the Western department would probably be advised as to the $15,000.00 payment. In the ordinary course Mr. Moeckel would be the person who would render the bills to the Western Department for charges. He was told not to forward it. He immediately recognized it as a Western department expense. He would have immediately billed it to the Western department except that he was advised not to do so. Later on he did so and this is when he did it (Moeckel, II, 319-320).

After the letter (Defendant's Exhibit 200) Mr. Moeckel got no instructions and made no entries adjusting this matter; he thinks that from that point Mr. Swan handled it. Mr. Swan came into the picture when this $22,000.00 check was drawn. When Mr. Sturm got the memorandum, which seems to be missing, he merely got the instruction from Mr. Swan to draw a check for $22,000.00. Mr. Moeckel thinks there is another letter requesting the Chicago office to remit for the full amount of the expense, $37,000.00 (Moeckel, II, 320).

Defendant's Exhibit 201 (II, 324) was a letter from the treasurer to B. W. Jones, Assistant Auditor for the Chicago office. It is dated March 30, 1936, and is as follows:

> "On the 21st instant we wrote you as per the attached letter and requested that you acknowledge receipt of same.
>
> Not having heard from you we are wondering if this letter was ever received by you. Kindly let me know."

Mr. Jones is the assistant comptroller in Mr. Henne's Chicago office (Henne, I, 52).

Defendant's Exhibit 202 (II, 325) is a letter from Bert W. Jones, Assistant Auditor, to Charles E. Swan, Treasurer, New York office. It is dated April 1, 1936, and is as follows:

> "Please accept my apology for not acknowledging receipt of your letter of March 21 with reference to the receipt of checks by the Home Office from R. G. Folonie and C. R. Street, Trustees, which was drawn to the order of our companies as follows:
>
> | | |
> |---|---|
> | Continental | $31,518.13 |
> | American Eagle | 5,192.61 |
> | Fidelity-Phenix | 37,036.10 |
> | First American | 2,867.80 |
> | Niagara | 5,496.24 |
> | Total | $82,110.88 |
>
> We have made the necessary entries on our cash books which will appear in the March Office Accounts.

> I note you will advise us with reference to the payment to Mr. Street of $22,323.12 which was charged to legal expense, together with a similar item of $15,000.00 which was paid by you last year."

Defendant's Exhibit 6 (I, 51) is a letter dated April 16, 1936, from Mr. Culver to Mr. E. A. Henne, Vice-President, Chicago office. It states that during "my" absence the question of providing money for covering legal expenses in the Missouri rate cases had some consideration, a payment of $22,323.12 was made, which in addition to the $15,000.00 already paid some time ago shows a payment by "our company" of $37,323.12. The letter states:

> "It seems to me that the easiest way to dispose of this matter is for you to send us a check for this amount, namely, $37,323.12, and we will make proper disposition of it here and clear our books. I assume that you will charge the item to legal expenses in connection with the Missouri rate case, but that part of the transaction I will leave to your best judgment. If you agree to this plan I would be glad to have your check for the amount above named."

The letter is just Mr. Culver's way of turning it over to Mr. Henne and leaving it to the latter's judgment. Mr. Culver never interferes with the Western Department affairs. He tells Mr. Henne to run it (Henne, I, 50). Mr. Culver's information was outlined in the above letter. The 1935 and 1936 payments which had been more or less in suspense all this time could be cleared off. Good bookkeepers like to get the suspense items cleaned off as soon as they can, and apparently as soon as the results of the second meeting came into being, Mr. Moeckel immediately notified Mr. Culver and they started to adjust their affairs between the New York and the Chicago office. That was the result of this letter that Mr. Culver wrote to Mr. Henne (Culver, III, 405).

They allocated the original $15,000.00 together with the final $22,000.00 among the various companies. It was split up among the companies on the Missouri impounded premium basis. They wiped that all out on the home office books before this other money came in (Emes, II, 338). The $15,000.00 was the advance. The instructions as to the final split-up were as to the whole $37,000.00, not the $15,000.00 (Emes, II, 332-333).

The check was for legal expenses. Mr. Culver thinks that when he said in his letter (Defendant's Exhibit 6) "I assume that you will charge the item to Missouri case, but that part of the transaction I will leave to your best judgment," that was just thrown in for good measure. They leave all such matters to Mr. Henne (Culver, III, 414).

As Mr. Henne recalls, this letter (Defendant's Exhibit 6, I, 51) is all the correspondence he got in regard to the $15,000.00 check. He does not recall that prior to April 16, 1936, he had been debited for his proportionate part of that $15,000.00 (Henne, I, 48). When he got this letter from his home office he knew that they were referring to something that the Actuarial Committee had passed upon. It had not been before the committee. Mr. Henne was still a member of that committee but he made no inquiry of Mr. Street as to why this item of legal expenses was handled in that manner (Henne, I, 59). Mr. Henne cannot answer "yes" to the question as to whether he, as a member of the committee, recognized this as a bill in connection with legal expenses in the Missouri rate litigation. His president advised him by letter that certain payments had been made by the New York office to Mr. Street that should be charged to legal expenses. He made no inquiry as a member of the Actuarial Committee. That was never discussed or mentioned in the committee to Mr. Henne's knowledge. There was no other time, to Mr. Henne's knowledge, when legal expenses in connection with Missouri rate litigation had been handled other than through the committee by passing on bills (Henne, I, 59-60).

Mr. Henne understood it was for legal expenses (Henne, I, 50). He assumed it was in connection with expenses in Missouri, and the only expense that they would have in Missouri in connection with the litigation would be legal (Henne, I, 50). Mr. Henne would say that any references to impounded and legal expenses therein meant not only the item of $37,000.00, but every other bill paid in connection with the Missouri rate litigation. He cannot tell why there was any question as to carrying the item as legal expenses. There was no question in his mind, because it was the only way and manner in which they could charge any item in connection with the Missouri rate litigation. He does not know why the item was broken down and not carried under usual legal expense without having page three of the An-

nual Statement. He imagines it is a matter of allocation of all expenses. Mr. Henne does not make annual statements, but that is what it has reference to (Henne, I, 61). Mr. Henne received a copy of the letter (Henne, I, 52, 56) to the Governing Committee (Defendant's Exhibit 8, I, 54) and the letter, Defendant's Exhibit 9 (I, 55), was left with Mr. Moeckel's office. That letter referred to how the disbursement was handled and was left for the purpose of making up the annual statement (Moeckel, II, 322) (Note: This letter (Exhibit 8) appears in full under "Notices and General Knowledge").

Mr. Moeckel had nothing to do with handling the transaction concerning which the president wrote Mr. Henne (Exhibit 6), except that when they got the money witness credited it probably against the two companies. That came in in due course following the letter. They got the check. It rested with legal expense (Moeckel, II, 320-321).

Defendant's Exhibit 7 (I, 53) which is defendant's Exhibit 203 (II, 340) is a letter dated April 20, 1936, to B. M. Culver, President, and states that in the absence of Vice-President Henne, the writer, in accordance with Mr. Culver's suggestion, was enclosing Continental Insurance Company's check payable to the company for the amount referred to in the president's letter of April 16th, with reference to the payments made by the Home Office amounting to $37,323.12 for legal expenses in connection with the Missouri rate case; that the payment represents 5 per cent of the impounded funds up to and including April 30, 1935, and is divided among the five companies on the following basis, which companies will reimburse the Continental for the amounts mentioned:

Continental	$14,326.42
Fidelity-Phenix	16,834.59
Niagara	2,498.29
American Eagle	2,360,28
First American	1,303.54

The allocation is in this letter (Henne, I, 58).

Mr. Moeckel had nothing to do with the letter, Exhibit 7. Mr. Jones wrote it to Mr. Culver. Mr. Moeckel merely got a copy of it, merely to complete his file on the subject. He got the check and credited it up to the

Continental and Fidelity-Phenix in equal proportion. He credited it to legal expense, although he had received no word in the letter to so credit it, because they had the charge on their books as legal expense. How they would charge it in the Chicago office would not have anything to do with the way they did it here. They would credit it in order to offset what they already had on their own books, regardless of what they had in the Chicago office. You would have given the account credit against which you charged it regardless of how they allocated it or anything else. The suggestion made to Mr. Henne about how it was to be charged was about how they might handle it in the Chicago office. It had nothing to do with how it had been handled in this office. How it had been handled would necessarily govern how it would be credited when the money came in (Moeckel, II, 321-322).

The payments were made out of the New York office. On April 16th, 1936, Mr. Henne received a letter asking for reimbursement to the Home Office in the sum of $37,323.12; that was honored, the transfer was made, and put in his books accordingly (Henne, I, 56-57).

Although Mr. Henne got the request for this $37,-323.12 addressed to the Continental, it was in fact the expense of that fleet in proportion to its premium writings in the State of Missouri (Henne, I, 57-58).

This one check was allocated to the different companies—entered as expenses against the individual companies on the proportion of the business involved. They carried all of the expense items and all of the bills out of the Continental, but at the end of 30 days they allocated the expense to the individual companies. The Continental is the leading company in the fleet, and to the extent that there is any clearing house between those allied companies, the Continental acts as such (Henne, I, 57). At the time when the check for $22,323.12 was given for legal expenses Mr. Henne knew that the trustees had on hand a large amount of money; that 30 per cent of substantially $9,000,000.00 was for the purpose of paying expenses of the litigation, and 5 per cent of that sum was some $450,000.00 more that the companies were called upon to pay (Henne, I, 52, 63). He knew that 30 per cent of the impounded premiums was there, but he did not know, until after this money had been paid, that it had been paid out (Henne, I, 66-67). He did not know that the

$23,000.00 was being collected. He does not recall the date, but he knew nothing about any collections of any funds by Mr. Street until after the job was finished. Mr. Henne would not admit that on March 21, 1936, when he received the 11 per cent disbursement, that he had been called upon to send back to Mr. Street as agent, $22,-323.12. The letter was addressed to Mr. Jones, the auditor. He does not doubt that he saw the letter, but does not recognize at this time that he did. About the date of the letter or shortly thereafter he learned that this disbursement by the companies to Mr. Street of $22,-323.12 was made, but he cannot specify the date. It was undoubtedly shortly after receipt of that (Henne, I, 63-64).

It is up to Mr. Henne if the loss ratio gets out of line compared to the experience of other successful companies, to either get it down or explain or show why it is not the fault of the underwriting practice in his eighteen states; and it is his responsibility to keep up or, if possible, to increase the premium volume, and to keep down the expenses. But it did not occur to him, when he was told that the home office had paid some $37,323.12 expenses that he did not know anything about, that there might have been a duplication and that they might have allowed a claim that had already been assessed through Missouri rating bureau. He did not think that could happen. Knowing Mr. Street as he does, it did not occur to him that maybe Mr. Street had exceeded his authority and had gone over his committee's head. He already knew that there was 30 per cent of the impounded funds available for expenses and that his committee had approved its own lawyer's fees and it was his understanding that the impounded funds were going to be used to pay the fees and expenses of the insurance department and that the master had been paid, and that the court costs had already accrued long since. That did not excite his curiosity one bit; he takes it that his superior officers knew what they were doing (Henne, I, 66-67).

The very fact that Mr. Henne did not know anything about the $37,000.00 until after it was incurred bespoke to him that it was not a routine matter. He knew it was not an allocation of home office expense, because he knew that the whole expense of the Missouri rate litigation would be charged to his department. As a general rule, when he issues a check for legal expenses or is charged

with legal expenses, he knows to whom it was paid and charged on the books. In this case he did not know to whom it was paid, and his books do not record. Neither does legal expense charged in connection with Missouri expense reflect to whom it was paid, other than to the bureau making the assessment for all expenses. These legal expenses were made through the Actuarial Committee, and when they were made through that committee he knew to whom it was paid and the amount, because he was a member of the committee all the time concerning to which he has testified (Henne, I, 69). He recognized it as a transaction out of the usual order of business, but he just cannot subscribe in this instance to the statement that he knew that was not the ordinary way of transacting business. He did not know what the explanation of it was, other than legal expenses. He could not imagine what lawyers or why. He did not know a thing about that. He would say that his proportion of the written premiums in Missouri as to the companies that were engaged in that litigation, in other words, the proportion of the expense falling on his fleet, was somewhere between 6 per cent and 8 per cent perhaps of the total premiums (Henne, I, 68).

Mr. Henne knew that after the declaration of trust Folonie and Street, as trustees, paid attorneys' fees and expenses out of the trust fund to Hicks and Folonie and other attorneys, but as he recalls those bills of Hicks and Folonie were presented to the committee (Henne, I, 62).

Mr. Henne made no inquiry of anyone as to why that disbursement was made to Mr. Street as agent, instead of going through the committee. It did not strike him as peculiar in any way. He knew that the committee of which he was a member had not passed upon it and had not been consulted about it. He had no purpose in not asking Mr. Street about it; it never occurred to him. This was a disbursement made by the New York office, and he would not question their action (Henne, I, 64). He made no inquiry as to why that additional attorneys' fee might be called for when they already had some three million dollars. It did not suggest any strange situation to him. His superior officer paid this money and he would not question him or his authority for paying it, but he was charged on the books for his part of it (Henne, I, 52). If they had said, "We have incurred $100,000.00 expenses for promoting the underwriting in

the eighteen states under which you have jurisdiction and are charging it against you," he might feel that he wanted to know whether they were putting a black spot on his record, but he does not question the authority of his superiors. He would have kidded them about it afterwards, but he would not question them. They were in the habit of just telling him they had charged against him some routine expense that comes along without any explanation why. He never checked on it to see whether it was right or wrong. He thinks they know what they are doing. He does not think they know more about the Western department than he does but it is their prerogative when it comes to allocating expenses. He does not know that he has much to say about it, at least that is his assumption (Henne, I, 67-68).

Since this occurred Mr. Henne has made no endeavor to ascertain what became of the money that was paid to Mr. Street. He has read articles in the press that this money was paid to Thomas J. Pendergast and others as a bribe, or for a fraudulent purpose; but he has made no endeavor to ascertain whether or not that is true, because he did not think it was any of his business. He had nothing to do with it and did not want to become involved in it, because the action was entirely outside of the Actuarial Committee's knowledge and that was the reason he did not and does not want to know anything about it. No member of the Actuarial Committee has, to his knowledge, made any investigation to find out whether or not these charges are true. The committee has not discussed them, either formally or informally, and Mr. Henne has only discussed it as a matter of gossip, subsequent to the newspaper publicity. He knows of no person in the insurance world who, at the direction of the Actuarial Committee, has undertaken to investigate as to whether those charges are true (Henne, I, 64-65).

Mr. Henne has not received any advice or information through official sources of his parent company in New York about any claim of credit on income tax returns for these disbursements to Mr. Street. He would not receive those advices (Henne, I, 65-66). Mr. Henne has nothing to do with his companies' income tax return, nor with making such return for any of his companies. That is the function of the New York office (Henne, I, 48, 52, 65). There is no income tax return made by the Chicago office. The record prepared by

New York might be verified for accounting purposes in New York so far as Mr. Henne knows. That is as much as he would know about it (Henne, I, 48).

GROUP THIRTEEN.

The Dubuque Fire and Marine Insurance Company and the National Reserve Insurance Company are two distinct companies under the same management. Their home office is in Dubuque and they have no other. They have agents in New York, but no manager (Weiser, I, 213-214).

Mr. Weiser was familiar with the settlement of the Missouri Insurance litigation (which litigation was in the charge of the Actuarial Committee (Weiser, I, 215)). That was made in May, 1935, only through the advices that he received from the committee or Mr. Clark who was on that committee and who represented the bureau companies. Mr. Weiser cannot tell what the nature of that settlement was, nor what it provided in substance. He would not want to say that he was positive on that score, but in answer to the question that it generally was on an 80-20 basis, 20 per cent to the policyholders and 80 per cent to the companies, he said it was something of that sort. He believes he knew that out of the 80 per cent, 30 per cent was allocated for the payment of the expenses of the litigation of the attorneys on both sides. That was his understanding (Weiser, I, 214). Mr. Reilly knew that the final decree was rendered in February; that there would be a distribution of 50% to the companies, 30% to the attorneys, and 20% to the policyholders; that the 30% was to be used, as they understood it, for attorneys' fees and expenses, and he understood that it was to cover the companies' liability for attorneys' fees, whatever that would be. He never met Mr. Charles R. Street; he does not know the man and does not know Mr. Clark (Reilly, I, 228). Mr. Weiser knew nothing about $100,500.00 being raised from some fourteen companies for the purpose of paying Hicks and Folonie.

"Q. Have you heard that that was done and learned the fact?

A. Just from you at this time. That is the first time I ever heard of it."

Mr. Weiser never heard of any payments or any sums being raised payable to them. His company did not participate in any payment of that character (Weiser, I, 214-215). They had all their dealings with Mr. H. A. Clark who was the Western Insurance Bureau member of that committee. Mr. Weiser never had any conversation or talks with Mr. Street (Weiser, I, 216). Mr. Weiser has known Mr. Street for quite a number of years (Weiser, I, 214). Prior to 1935, so far as Mr. Weiser knows, no officer of his company telegraphed, telephoned or otherwise spoke to Mr. Street telling him to act for them in this sixteen and two-thirds per cent litigation. Not a soul connected with their company did, because Mr. Weiser would be the one to do that, and no one in his company, so far as he knows, ever by telephone, telegraph or letter or personal conversation, told the Subscribers Actuarial Committee or any member of it to bring a suit for them about this Missouri sixteen and two-thirds per cent rate, or to do anything in connection with it. Mr. Weiser imagined he heard that a suit had been brought for his company. He imagined he heard that the litigation was pending. If the suit was started, naturally it would come to his attention. He understood the companies had their committee that was handling the litigation; that was the Subscribers Actuarial Committee (Weiser, I, 226). Mr. Weiser's companies did not have any lawyers in this case that he knows of. As he understands it, this committee brought the suit for him, and he thinks Hicks and Folonie were the only lawyers he ever heard of. He believes Hicks and Folonie were the only lawyers handling the cases for them (Weiser, I, 227-228).

In reference to the checks (Exhibits 46 and 47, I, 223-224), Mr. Weiser stated that he imagined C. R. Street was the agent in charge of the companies' interests in connection with the committee that was handling the litigation on the impounded premiums. In other words, they wrote Mr. Street those checks as their agent, for distribution, in accordance with Mr. Clark's instructions to them to pay whatever attorneys' fees and expenses Mr. Clark had mentioned to him. Mr. Weiser could not say whether they had paid any previous attorneys' fees or not. They always understood that Hicks and Folonie were their attorneys, but he cannot remember whether he paid them any fees (Weiser, I, 225).

Mr. Weiser had a telephone call from Mr. Clark saying they were sending some money, which Mr. Weiser

thinks amounted to sixty-four hundred and some hundred dollars with the Dubuque and about $1,600.00 with the National Reserve. He received a letter from Mr. Clark the next morning advising that Mr. Clark was forwarding the money and confirming the telephone talk of that date, and Mr. Clark asked them to remit 5 per cent of that amount (Weiser, I, 215-216). Mr. Weiser understood that his portion was 5% of the impounded premiums (Weiser, I, 219). Mr. Weiser made the check to Charles R. Street as agent because Mr. Clark, who was the only one on that committee that he ever had any dealings with in connection with it, had asked him to do it that way. Asked why he thought it was a proper charge, Mr. Weiser answered that he didn't question it. He understood that the purpose of it was attorneys' fees and expense—he supposed in connection with the litigation (Weiser, I, 227).

Mr. Weiser believes that his company was a party plaintiff to the Missouri Impounded Premiums litigation. There is no question but what he believed so at the time he made the check or he would not have paid it. When Mr. Clark told him to draw the check he drew it out and sent it to Mr. Clark. Mr. Weiser knew that the Dubuque Fire and Marine Insurance Company had a suit pending in the federal court for the return of the impounded premiums, and that is the litigation he understood Mr. Street's committee was handling (Weiser, I, 227).

Defendant's Exhibit 45 (I, 220) is the letter which Mr. Clark wrote to Mr. Weiser. It states that it is to confirm that day's telephone conversation. It states that the enclosed checks, to the Dubuque for $6,400.91, and to the Nat'l Reserve for $1,487.34, are a payment out of the 30 per cent of the Missouri Impounded Premium fund held by trustees, R. J. Folonie and C. R. Street. It requests that after receipt of the checks, that Mr. Weiser send Mr. Clark a check for each of his companies for 5 per cent of their impounded premiums as of May 1, 1935, payable to C. R. Street, agent, and states that they are payment on account of attorneys' fees and expenses in connection with this litigation. There was no particular reason why Mr. Clark would communicate with Mr. Weiser's group of insurance companies, outside of the fact that he was a bureau member that was on that committee (Weiser, I, 216). Mr. Weiser cannot answer why Mr. Clark telephoned and had a conversation with

him and then wrote confirming the telephone conversation. There was nothing urgent about getting the checks out, to Mr. Weiser's knowledge. Mr. Clark wrote the same day he telephoned. Mr. Weiser never had any explanation as to why he held this telephone conversation and then immediately wrote confirming it. Mr. Clark simply told Mr. Weiser that they were sending him 11 per cent and would want 5 per cent back for expenses. Mr. Clark didn't tell Mr. Weiser to rush the check to him or anything else, and did not tell Mr. Weiser he would write him. Mr. Weiser acted on the request the next day when the letter came in. He did not know the letter was coming. He made a memorandum and handed it to his assistant, Mr. Reilly, immediately upon receipt of the telephone call, and Mr. Clark's letter apparently came in before Mr. Reilly had taken action (Weiser, I, 216-217).

The memorandum handed by Mr. Weiser to Mr. Reilly was identified as Defendant's Exhibit 44 (I, 217). That exhibit is a memorandum entitled "30 per cent item" directing the return of a check for each—"5 per cent impounded premiums as of May 1, 1935, drawn to C. R. Street, agent, a/c Attys Fees & Expense."

When Mr. Reilly got the memorandum, which was in the handwriting of Mr. Weiser, Mr. Reilly got no further information from Mr. Weiser about the matter, other than that contained in the memorandum. Mr. Reilly found out that they were getting $6,400.00 out of the 30 per cent item after the receipt of the letter. He held the memorandum until the letter came for no particular reason, possibly because other duties at the time interfered; so he had the letter before him at the time he issued the checks, as well as the memorandum. The total of the two checks was 11 per cent and he knew that he was required to issue a check for 5 per cent to C. R. Street, agent. Mr. Reilly knew that, according to the decree, the attorneys' fees were to be paid out of the 30 per cent item; that that item was to take care of attorneys' fees. He did not call that fact to Mr. Weiser's attention, because, as a subordinate, he carried out the order of his superior. Mr. Reilly did not know that there was something out of the ordinary about it. The fact that attorneys' fees to the extent of 5 per cent of the impounded premiums were to go to C. R. Street, agent, did not cause an inquiry in his mind about what was

happening. He did not wonder about it. It did not occur to him that it was possibly an error. He did not discuss it with Mr. Weiser at all (Reilly, I, 228-230).

Mr. Reilly cannot say from whom the check for 11 per cent came, other than it was enclosed with the letter from Mr. Clark, which refers to Folonie and Street as trustees. It came from those trustees, so far as he knows, and accompanied the letter. He does not remember and cannot state the signatures. He assumed that 11 per cent out of the 30 per cent item was available for distribution, and that that was its purpose to him, and he assumed that it would not be needed for expenses such as attorneys' fees, etc. It did not strike him as strange that this request came for 5 per cent for attorneys' fees payable to C. R. Street, Agent, nor make any impression on his mind at all. He had no other conclusion than that it was for attorneys' fees in this litigation, and that was his conclusion. He went no further with his reasoning as to why it was done in that manner nor why it was deducted out of the 11 per cent (Reilly, I, 230).

Mr. Weiser did not remember much about the memorandum (Exhibit 44), except that he got the information that the checks were to be sent to cover attorneys' fees and expense from Mr. Clark. He does not remember whether Mr. Clark made any statement as to why he was sending 11 per cent and calling over the telephone asking the return of 5 per cent payable to C. R. Street, agent. He does not remember whether the 11 per cent check was signed by Street and Folonie as trustees, but thinks it was turned over to the chief accountant for deposit. Mr. Weiser never saw that check. It did not strike him as strange that the 5 per cent for attorneys' fees and expense was not held out by the trustees under the trust agreement. It did not occur to him to question it at all. It never entered his mind. He never thought to make any inquiry about it. He did not ask or undertake to find out to whom Mr. Street was going to pay the attorneys' fees (Weiser, I, 218-219). As to whether the other companies were bearing a like portion, Mr. Weiser knew nothing about the other companies. He knew they told him it was 5 per cent, and he followed instructions (Weiser, I, 219).

Mr. Weiser did not quite understand the purpose for which the 30 per cent fund was being held by R. J. Folonie and C. R. Street, and it did not mean anything to him when Mr. Clark's letter said "This is a payment

out of the 30 per cent of the amount of the Missouri impounded premium fund that is being held by trustees Folonie and Street," outside of the fact that they received one check for $6,500.00 and one for $1,400.00. Mr. Weiser did not bother his head about what the 30 per cent was allocated for, and when the settlement was made he did not bother his head to find out what was done with some $71,000.00 worth of premiums that belonged to his company. He did not know and did not think it was settled yet. His companies had $71,711.00 impounded premiums as of May 1, 1935. He knew that some kind of compromise had been effected, and he felt that they would get their just dues in due course. He never undertook to find out what portion of that money was to be returned to his company. He did not know whether it was 10 per cent, 90 per cent or 50 per cent. He had not bothered his head about it one way or another (Weiser, I, 221-222).

Mr. Weiser caused an account to be set up on his books in regard to these impounded premiums, which showed the extent of the impounded premiums. After the compromise was made, no entries were made on the books in regard to that compromise. Mr. Weiser believes that they carried it as an asset and that they also charged the same amount in their liabilities as a contra charge, which he believes was according to the recommendation of the Missouri Insurance Department, prior to Mr. O'Malley's rule (Weiser, I, 222).

GROUP FOURTEEN.

During 1935 and 1936 the name of this company was Eagle, Star & British Dominion Insurance Co., Ltd. About eighteen months ago the name was shortened and it is now Eagle Star Insurance Company, Ltd. (Casper, II, 106). In 1935 and 1936 and prior thereto this company had a suit in this court involving the Missouri rate cases (Casper, II, 106). The attorneys handling the case for Eagle, Star and British Dominion Insurance Co., Ltd., were Hicks and Folonie. Mr. Casper thinks, because at the moment it is his definite conviction, that the Missouri committee of the Subscribers Actuarial Committee was in charge of the litigation (Casper, II, 106).

So far as Mr. Casper knows nobody connected with this company ever asked Mr. Street to act for it. The matter was in the hands of trusted counsel with im-

plicit faith in the integrity of the committee; so when the suit was started, carried on, ended and everything, they asked no questions whatever. The company never authorized Mr. Street nor anybody else to pay Mr. Pendergast nor anybody else to get a settlement of this kind (Casper, II, 116). Mr. Casper knew Mr. Street very well and knew that he was chairman of the Subscribers Actuarial Committee in 1935 (Casper, II, 106).

This company had something like $20,500.00 impoundments. At a certain time Mr. Casper got information that the rate suit in Missouri had been compromised and settled; it would be a little difficult to say when. He would not try to answer how long it was after the settlement when he heard it. He heard of the court decree of February, 1, 1936, shortly after that date (Casper, II, 106-107). He is willing to say that it was not very long until they received their 50 per cent. He does not know anything definite about those dates and did not check them up in any way (Casper, II, 107-108). He absolutely knows that, shortly after that, shortly after February 1, 1935, his company got 50 per cent of its impoundings back. He recalls, in a general way, that the distribution under the terms of the decree was 50 per cent to come to the companies, 20 per cent to go to the policyholders, 30 per cent to Street and Folonie as trustees to serve later purposes—to pay expenses and liquidate the position. Any of the 30 per cent not required for expenses was to be returned as a further part of the 80 per cent. It was their understanding that the companies were to get 80 per cent, but were to pay a great many expenses, and 30 per cent was reserved with which to handle that, to be sure they could take care of the expense (Casper, II, 107).

Mr. Erskine stepped into Mr. Casper's office, and placed a check on his desk, which was supposed to be for 11 per cent of this company's impounded funds. Mr. Casper presumes the 11 per cent check was that of Street and Folonie as trustees (Casper, II, 110). He does not remember Mr. Erskine's words, but he can safely say that Mr. Erskine smilingly said "Here is something for you, 11 per cent of your impoundings. I want your check for 5 per cent." Mr. Erskine nominated the amount shown on the check. Mr. Casper either asked or Mr. Erskine stated that he wanted the check made to C. R. Street, agent (Casper, II, 110). In reply to Mr. Casper's inquiry

as to what the check was for, Mr. Erskine said that he did not know what the check was for, other than that Mr. Street had asked his office to collect that check in the amount of 5 per cent. Mr. Casper distinctly remembers saying, "That doesn't serve my purpose. I have bookkeeping matters to take care of in this office, and I have got to know what to charge it to. Is it to be charged against our recoveries, or is it a matter of legal expenses?" Mr. Erskine said, "Oh, no, this is a matter of legal expense in closing this matter up." Mr. Casper said "Then it should be charged to legal expense?" Mr. Erskine said, "Yes." Mr. Casper said "All right" (Casper, II, 110). Mr. Erskine told Mr. Casper that this was for legal expense. Mr. Casper did not ask him what particular legal expense it was. Mr. Casper is not prepared to admit that he knew at that day that the legal expenses were to be drawn out of the 30 per cent. He had known it prior to that time, but he is not prepared to admit that at that time there was any memory of that thing, in any way, shape or form; so he had no idea about a possible double payment. He asked Mr. Erskine for no particulars whatever about the expense. All he asked was "Is that a relative situation, or, are we all doing it, or, is this a requirement of them all." At this juncture Mr. Casper volunteered that "In view of events, I am a whole lot dumber than I thought I ever was" (Casper, II, 114).

Mr. Casper disliked Mr. Street thoroughly, but had perfect confidence in his integrity and ability. That is what caused him to make the check to Mr. Street. Anything Mr. Street would have asked for with the statement that it was relative, he could have gotten; and, of course, Mr. Casper's confidence in Mr. Erskine and his office would be the same. When he says "relative" he means a pro rata basis applicable to all companies involved. He then changed the word and said proportionate. They always asked for no less and intended to do more than their share (Casper, II, 115). Mr. Casper cannot remember that there was any promise that there would be an accounting for what the check was for, nor that there would be any statement given to him. He did not even ask for it. There never was any intimation that he would get any more detail than he had (Casper, II, 116).

Defendant's Exhibit 158 (II, 112) acts as a requisition and a voucher later, when and if executed and returned to them (Casper, II, 110-111). Said exhibit is denom-

inated "voucher." It bears the title "Eagle, Star & British Dominion Insurance Co., Ltd.," is dated March 24, 1936, and calls for a check to C. R. Street, agent, on account of legal expense in the sum of $1,028.57 and bears the notation "In connection with the adjustment of Missouri Imp. Refund to 4/30/36."

Defendant's Exhibit 159 (II, 114) is a page from the cash book of Eagle, Star & British Dominion Insurance Co., Ltd., dated March, 1936. It contains an entry under date of March 24th, as follows:

"Account	Particulars	Total
Legal Expense	C. R. Street, agent in connection with adjustment of Missouri Imp. refund to 4/30/36.	$1,028.57."

Mr. Casper had absolutely nothing to do with the entry on the cash book. The cashier did that (Casper, II, 114). Mr. McBride saw Mr. Erskine that day when he came to Mr. Casper's office. Mr. McBride was called in and stood for a moment while the matter was disposed of (Casper, II, 116). Mr. Casper told Mr. McBride that he wanted the check, and at that time the matter of how it was to be charged came up. Mr. McBride went out and brought back the check with this voucher made out "to this extent," and Mr. McBride said "I have to have this information, Mr. Casper"; so when he got that information he went back and filled this out, and this is Mr. McBride's handwriting; that is the handwriting of the cashier's, whose initials are there. The words "legal expense" and "in connection with adjustment with Missouri Imp. Refund to 4/30/36," is the way Mr. McBride boiled down the information that Mr. Casper gave him (Casper, II, 113). Mr. McBride would know more details than Mr. Casper because Mr. McBride handled them. Mr. McBride only did the clerical (Casper, II, 116).

Mr. Casper has no personal acquaintance whatever with Mr. Pendergast or Mr. O'Malley. He does not think anyone connected with his company had. He thinks he remembers personally meeting Mr. McCormack at some agent's meeting or something fifteen or twenty years ago. He never by telegram, telephone, letter or personal conversation had any communication with Messrs. Pender-

gast, O'Malley or McCormack regarding the rate situation or the settlement (Casper, II, 115). Certainly no one in this company's office knows anything of the wrongful payment of money in fee (Casper, II, 117).

GROUP FIFTEEN.

The Victory and the Reliance Insurance Companies were merged in 1934. The Reliance is the continuing, operating company (Lane, I, 363).

A.

At the Chicago Office.

The business of these companies in Missouri is handled through their Western department located in Chicago, the manager of which is A. F. Powrie (Lane, I, 363). Mr. Powrie accounts to the home office in Philadelphia (Powrie, I, 110). Mr. Powrie knew that Mr. Street was chairman of the Actuarial Committee (Powrie, I, 117).

Mr. Powrie does not remember the date when he first heard of any compromise of the rate litigation. He did not know a compromise was being negotiated prior to the time when the compromise was made, except that he knew a compromise had been talked about for a long while—gossip that it would be compromised. A compromise was being sought or being talked about. He knew nothing about it. He knew nothing at all about the negotiations as they went on. He first learned about it shortly after it was consummated. He does not remember receiving any official notification, and does not think he received any kind of a notification that it has been compromised, or the terms of the compromise. He thinks his first knowledge was through the press. He has never known anything about the terms of the compromise except as to the returns to policyholders. He knew that, because they had to pay it, and they went through their records and it had to be paid back. He believes it was 20 per cent, and thinks it was 50 per cent that went outright to the companies. He thought it was a little more than that. He is not certain as to amount. He believes he knew that 30 per cent was withheld for the benefit of the companies after payment of the expenses. He does not believe that he ever knew the total amount of the impounded premiums, but he knew the amount of his com-

panies' impounded premiums, which, as of May 1, 1935, was something like $142,768.00 (Powrie, I, 110-111).

Mr. Powrie first learned that Mr. Street needed expense money when he called on the telephone and asked witness to send him a check for $1,712.82, which he said was for expense in the Missouri case, but he did not say a word about for what purpose or anything, and Mr. Powrie did not ask him. At that time Mr. Powrie did not know that the Actuarial Committee was handling the matter for disbursements and expenses, or anything about it. Mr. Street asked for the $1,712.82. Mr. Street did not state what it was for (Powrie, I, 114). Mr. Powrie sent Mr. Street the check (Defendant's Exhibit 28-A, III, 436) (Powrie, I, 119). Defendant's Exhibit 29 (I, 120) is a letter dated March 13, 1936, addressed to C. R. Street, stating that in accordance with their conversation of yesterday the writer enclosed check in the amount of $1,-712.82 and asks Mr. Street to sign the attached receipt and return it to him as the voucher.

Mr. Powrie knew it was for expenses; Mr. Street said that Mr. Powrie took and Mr. Street sent the receipt for it as such (Powrie, I, 122, 114, 117). Mr. Powrie had not paid out any expenses in connection with this litigation, that he recalls, prior to that time. This was the first item of expense. He remembers no other. There may have been some, but he does not remember (Powrie, I, 114). Mr. Powrie gave no thought to the question as to whether Mr. Street meant that he was signing the receipt as chairman of the Actuarial Committee (Powrie, I, 117). Mr. Powrie presumes that Mr. Street wrote the word "chairman" on the receipt, but he does not know about it. He knows that he, himself, did not write it (Powrie, I, 121). Mr. Powrie did not personally write out the receipt, but it was written in the office. From the penmanship he would say it was written by L. H. Hornbrook, their accountant, who is undoubtedly the man Mr. Powrie told it would be entered on the books as legal expense. It was written "advance expenses" instead of "legal expense Missouri litigation" because, Mr. Powrie believes, it was later that the accountant asked Mr. Powrie if he should put it in legal expense, and Mr. Powrie told him "yes." That is his recollection (Powrie, I, 121).

The only purpose that Mr. Powrie knew about was expenses (Powrie, I, 118). He does not believe he asked Mr. Street anything about it (Powrie, I, 118).

Exhibit 28 (I, 116) is a receipt to Fire Association of Philadelphia for $1,712.82 for "ADV., EXP., Mo. litigation" signed "C. R. Street, Chairman," dated March 13, 1936.

Defendant's Exhibit 27 (I, 112) is a letter written to Mr. Lane by Mr. Powrie who signed as "Manager" (Powrie, I, 111). It is dated March 12, 1936, and states that during Mr. Lane's brief stay in Chicago last week the writer mentioned payment in bonds by the custodian of a portion of the return to the companies of Missouri impounded premiums, and that the bonds went direct to the home office. It states that tomorrow we will receive checks—Fire Association $4,625.84, Lumbermens' $1,928.10; Reliance, $1,254.82; Victory $757.35; representing a portion of the additional amounts due, which will not be entirely determined until final settlement is made by the custodian; that pending this final settlement it is necessary to use some money for expenses, just the nature of which he does not know, but he advanced to Mr. Street a check for $1,712.82 for which he would have his receipt; that he is advising Mr. Lane of the transaction personally as, until the final distribution and participation or expenses are made, the amount cannot be definitely allocated to the proper place of charge.

The amounts stated in the letter referred to checks that they were to receive. Mr. Powrie thinks that came from the Subscribers Committee, from the trustees, or whoever was handling it. He does not remember (Powrie, I, 113). Mr. Powrie wrote to Mr. Lane advising him personally, because he was leaving the same day or the next for Hot Springs, Arkansas, to be gone for some little time, and he wanted the chief to certainly know about any expenditure of $1,712.00 that was made in his department. He did not tell him what it was for, except expenses, because he did not know—that is all he knew as to what it was for. He wanted his chief to know about it because he did not think it would look very good for him to send out that amount and not tell the head office about it (Powrie, I, 117). It was not a lot of money, but it was enough that it might attract attention. He does not know it would attract attention. Mr. Lane might never see it; but Mr. Powrie wanted Mr. Lane to know about it (Powrie, I, 117-118).

Mr. Powrie did not ask Mr. Street what expenses it was to be used for, because he did not give it a thought.

But he did give it a thought when he accounted to his principal, since it was an expenditure from the office and he wanted his principal to know about it (Powrie, I, 117-118).

Mr. Powrie thinks Mr. Street was available, but he did not ask him. When asked why he did not ask Mr. Street to get the mystery solved, he answered "I was not thinking there was any mystery" (Powrie, I, 118). It is a fair question to ask now, why Mr. Powrie did not ask Mr. Street to please explain what it was, for his records, at the time he wrote him the letter; but at that time he had no thought of questioning what a request from Mr. Street was for (Powrie, I, 122). Mr. Powrie does not know whether he could have immediately found out how to allocate it if he had asked Mr. Street. He carried it on the books as legal expenses. He had not heard of legal expenses; but the accountant asked him what he should charge it to, and he said "For now, charge it to legal expense." He could not think of any other expense it could be in connection with the Missouri Impounded case (Powrie, I, 118).

There are items on the books concerning which Mr. Powrie does not know where they are properly placeable; but he is not an accountant and does not remember them. The accountant comes in and asks him about expenditures and says "Where does that go, to such and such an account?" Mr. Powrie says, "Why, yes, that is all right." He did not say that he frequently carried items like this on his books, and he does not remember whether this is the first time. He presumes that the accountant could probably find some other transactions (Powrie, I, 119).

Defendant's Exhibit 30 (I, 131) is a letter dated April 27, 1936, signed by "C. R. Street, agent." "Dear Abe" is Mr. Powrie (Powrie, I, 122).

The letter is as follows:

"Dear Abe:

Here are four checks as follows:

Fire Association of Philadelphia	$3854.86
Lumbermen's Insurance Company	1606.75
Reliance Insurance Company	1045.68
Victory Insurance Company	631.12

Adding this to what I gave you before makes 11% of your impounded premiums in Missouri.

> These checks are supposed to be for 5%. Please deduct from their respective amounts what you paid me before and send me your check for the difference, which will mean that you have paid me 5% of the total amount of premiums you have impounded in Missouri, but that out of the expense funds apportioned to me and Folonie as trustees, you have been furnished the money to pay it. This has been done by every company without exception. After the plan was changed I left you for the last and then held it over in order to explain it to our friend Lane, which was done at White Sulphur. He told me to tell you to do as the others had done and it would be all right with him."

Mr. Powrie does not know whether this money was coming out of the 30 per cent that had been retained for the payment of expense or not. He does not remember what there was to it. He received the letter. He knows that those checks came and what the letter says. He did not know there had been any plan of any kind. He never talked to Mr. Lane about any plan (Powrie, I, 122-123).

Defendant's Exhibit 31 (I, 125) is Mr. Powrie's answer to Mr. Street, dated April 29, 1936 (Powrie, I, 124). It is as follows:

> "Thanks for your letter of April 27th and checks payable to the Fire Association of Philadelphia, Lumbermens' Insurance Company, Reliance Insurance Company and Victory Insurance Company, totaling $7138.41. As per your suggestion we have deducted the item of $1712.82 for which check was recently sent to you and return proportionate amounts from each of the above companies, totaling $5,425.59."

Mr. Powrie deducted what he had advanced Mr. Street and then sent him the balance. He did that because of that letter. Not particularly authorization because of the letter from Mr. Street (Powrie, I, 124). He sent the amount mentioned in Exhibit 31 because Mr. Street asked for it (Powrie, I, 126). He thinks it is true that at the time he disbursed this he did so simply because Mr. Street told him to, and did not tell him what to do with it (Powrie, I, 129). He did not know what it was for. He had a surmise it was probably their portion of the

expenses in the impoundment case. He did not ask Mr. Street nor make any inquiry whatever, and he does not know to this day what it was for, and has made no inquiry to this date to find out (Powrie, I, 126-127). He sent Mr. Street the money without any questioning, and does not remember whether they ever asked him to account for it (Powrie, I, 129). He naturally supposed sooner or later that it would be an accounting of the entire transaction of everything, but he thinks that perhaps once or twice he asked Mr. Street when the Missouri settlement figures would all come through. He does not remember where he saw Mr. Street and asked him that. He hasn't said that he did, but only that he thinks perhaps he asked him. He has never asked anybody about what this was about and what it was for (Powrie, I, 129-130).

Mr. Street lived for a couple of years after the payment was made. Both his and Mr. Powrie's headquarters were in Chicago. Mr. Powrie was not prevented from inquiring of Mr. Street. He just did not do it, assuming that eventually there would be some statement made as to the entire settlement of the Missouri Impounding cases. He probably asked Mr. Street about the Missouri case, and in his usual way Mr. Street probably said "well, I will send you a statement" or something of that sort. Mr. Street was a peculiar man, and that letter came which deals with the accounting part of it, as to making the statement. Mr. Powrie does not remember that when the end of 1937 came he made any inquiry, and he does not know that he did not. He cannot remember when he inquired about how the Missouri case was progressing. The thing had dragged along for years, and Mr. Powrie was not in on the handling of it, and knew nothing about it (Powrie, I, 134-135). Mr. Powrie first charged it up as legal expense, but finally deducted it as the letter says from those remittances that are mentioned there (Powrie, I, 123).

On the books you will see a kind of funny entry. It was entered as a contra account; 11 per cent went in and 5 per cent was charged back. There is a "recap." In the first place, there was the $1,712.89 check sent to Mr. Street in answer to his request over the telephone for that amount of money. Later the checks, Fire Association, Lumbermen's, etc., $3,854.00 for the pro rata share of each company payable to C. R. Street was deducted from those items. Then, instead of charging that

as legal expense or anything else, the accountant enters that as contra accounts, and there is no allocation of those moneys on the books (Powrie, I, 127). Mr. Powrie was asked why he did not enter it up just as an ordinary transaction where he received money and disbursed it. He replied, "You are asking me a question about accounting which I will not attempt to answer, because I do not know anything about accounting."

To the best of his recollection, the first time he knew anything about this contra account was on the "recap" that was shown after the photostatic copies were taken. Mr. Powrie would not say that the money just came in and the accountant decided to do the best he could without trying to find out from anybody where the money came from or why it went out again. It is several years ago, and Mr. Powrie does not know whether the accountant said anything to him about it. He approved Mr. Street's letter and sent it to the accountant. He presumes the accountant had access to the letter written to Mr. Powrie; but he does not remember whether the accountant asked him any further questions about it (Powrie, I, 127-129).

That was in the Western department, and Mr. Powrie does not think the home office accountant ever asked him anything about it. Mr. Powrie does not know whether the account went to the home office in this form of a contra account, and he does not know whether they have any other entries on their books in regard to other business that is written in this manner. He cannot answer whether this is the first time that he had ever seen that kind of entry; he may have seen some others. The accountant may have called his attention to the contra accounts, but he does not remember any specific cases. He does not pretend to know anything about it (Powrie, I, 128, 129).

Mr. Powrie does not believe he ever talked with Mr. Lane. He does not remember talking to him about that account. Mr. Lane never wrote him and he does not remember that he wrote Mr. Lane about it (Powrie, I, 123).

Mr. Powrie was asked if he knew that the trustees had funds for their portion of expenses in the Missouri impoundment case, and he replied that he did not know what the situation was. He knew that the trustees had funds in their hands, and he had no idea but "what

in the distribution of the allocation of the funds in the trustees' hands, but what this money would be repaid to us—I didn't know but what in the allocation in the funds, the expense funds in the trustees' hands, this money might come back to us" (Powrie, I, 126).

Defendant's Exhibit 32 (I, 132) looks as if the witness had asked Mr. Street a question and Mr. Street had typed it and sent it over to witness (Powrie, I, 130). It is a letter dated November 9, 1936, addressed "Mr. Powrie" and signed, "C. R. S." which means C. R. Street (Powrie, I, 133). It is as follows:

"Missouri

The companies have been paid 61% of their impounded premiums in cash, and if we can cut off the lawyers, who, however, show no disposition to let go of a good thing and little disposition to really compromise, we should be able to return to the companies about 9% additional in cash, or 70% in all.

Under court order the only distribution which has been made was out of impoundments down to May 1, 1935. In the fullness of time companies will receive 50% on the impoundments subsequent to May 1, 1935, but when this will be paid I do not know, nor, for that matter, does anyone else.

On these impoundments, May 1, 1935, until November, the companies will not receive in the end in excess of 55% as against 70% on previous impoundings. This is for the reason that the assured under the settlement receives a refund of one-third of 16-2/3% May 1, 1935, to November, whereas prior to May 1, 1935, the assured receives only 20% of 16-2/3%.

As to expenses I do not know what to say, nor for that matter, will anybody else. It is my intention in this office to charge back to the State of Missouri in our Tax Returns for this year the 20% to be returned to policyholders on the early impoundings and one-third of the impoundings subsequent to May 1, 1935, as return premiums, which is an entirely legitimate proposition; to charge about 5% of our total impoundings to legal expense and to charge off anything that is left in the end as uncollectable premiums, the same as agents' balances not collected.

> Before we went into this settlement special care was exercised to see that our attorneys approved a disposition of the case along the lines of the settlement as later made. They seemed really enthusiastic at the time and promised all sorts of co-operation, but I must say that later on their general disposition has been to delay in order that additional fees may be claimed—it is particularly unfortunate for us that this case has represented 99% of Mr. Folonie's practice during the five years prior to the time the settlement was agreed upon."

Through the press Mr. Powrie learned that it is charged that some moneys were used for fraudulent purposes, and, according to the press, perhaps it is so that part of the money which these companies had paid had been used for that purpose. Mr. Powrie has made no inquiry whatever to find out if that is true. Mr. Powrie asked, "of whom would I make inquiry?" "From whom should I inquire * * * from whom could I inquire?" The man to whom he paid money is dead, he could not make inquiry from him. He never made any inquiry from Mr. Street about the disbursement of those funds. He does not know anything about where the money went (Powrie, I, 133-134).

B.

At the Home Office.

Mr. Lane was familiar in a general way with the pendency of the Missouri rate litigation (Lane, I, 363). He knows that the Subscribers Actuarial Committee in Chicago was in charge of and managing the whole litigation (Lane, I, 363, 368). Matters in connection with the litigation and compromise would have come before Mr. Powrie in Chicago. He would have reported them in a general way to the head office at Philadelphia (Lane, I, 364-365).

Mr. Lane knew nothing about $100,500.00 being raised for any purpose in connection with the compromise. He has since learned about it through the press and discussion of it. That was his first information as to that $100,000.00. He had none prior to that time (Lane, I, 364). Mr. Lane knew as a matter of hearsay, but by no other means, that a decree was entered in the federal court (Lane, I, 364). In 1935 Mr. Lane learned from the

press that negotiations were being conducted for a compromise of the litigation, and in general, he learned of the terms and provisions of the compromise agreement when it was signed. He knows the 20 per cent was allocated to the policyholders, 30 per cent placed in the hands of Folonie and Street as trustees, and 50 per cent to go outright to the companies (Lane, I, 363-364, 366). The 50 per cent from the custodian was received at various times in various amounts (Lane, I, 365). Mr. Lane cannot answer whether his companies have received the 50 per cent from the custodians when they got the 11 per cent, because the detail was handled in Chicago (Lane, I, 365). Mr. Lane was ill at the time, or approximately the time, and never saw a copy of declaration of trust signed by Street and Folonie (Lane, I, 364). He did not know the details of the 30 per cent as to expense of litigation to be paid first (Lane, I, 364). Mr. Lane did not know the fund out of which any remittance to his company was drawn; but he knew, on the report from the manager of the Western department, that they had received moneys from the people who had the litigation in charge in their behalf (Lane, I, 365). He knew it as these other facts relating to disposition of the impounded funds, from what he read in the Insurance Press. He knew that Folonie and Street were trustees of the 30 per cent fund. He did not know the extent of the impounded premiums of all companies in Missouri. As to his own company, the record shows, but he did not carry it in his mind as a figure (Lane, I, 364).

Mr. Street talked with Mr. Lane about expense money which, he said, was required; but never about paying to him, as agent, 5 per cent of the impounded premiums for any purpose. Mr. Lane thinks he talked to Mr. Street in April, 1936, at White Sulphur Springs at the meeting of the Western Underwriter's Association. He cannot recollect definitely, but would say that he talked to Mr. Street apart, alone. Mr. Street brought up the subject and asked witness if his companies would be willing to advance money for needed legal expenses and he told Mr. Street that they would. Mr. Street did not tell Mr. Lane to whom the legal expenses were to be paid, nor anything about the amount. Mr. Lane did not ask how it was that Mr. Street needed money for legal expenses when, as co-trustee with Folonie, he should

have a sufficient amount, because Mr. Lane never gave it a thought. He did not, within his recollection, make any memorandum of the conversation at the time (Lane, I, 365-366). Mr. Lane understands that the checks were issued for the payment of this fund in Chicago, subsequent to these conversations. He thinks Mr. Powrie advised him. He thinks Mr. Powrie told him that he had sent Mr. Street an aggregation of seventeen hundred, eighty odd dollars for legal expenses, and that they would be accounted for by Mr. Street subsequently. Mr. Lane does not recollect that he ever advised Mr. Powrie or spoke to him at all about what Mr. Street had told Mr. Lane (Lane, I, 366). The letter transmitting the seventeen hundred odd dollars was dated March 13, whereas Mr. Lane's conversation with Mr. Street was sometime in April, the subsequent month. But Mr. Lane had seen the letter of March 12, 1936, from Mr. Powrie to him (Exhibit 27). Apparently from this record, Mr. Powrie advanced some seventeen hundred dollars before his conversation with Mr. Street in April, but Mr. Lane does not know that he did. Mr. Lane knew from the letter that apparently, following his conversation with Mr. Street, Mr. Street had talked to Mr. Powrie and that this check, and possibly similar checks from other companies, had passed. He does not know the form of the payee (Lane, I, 368-369). Mr. Street did not tell Mr. Lane that other companies would be called upon for a similar amount, nor anything about the amount involved. Mr. Lane did not know or attempt to calculate the amount of the assessment of all companies (Lane, I, 366). Mr. Lane had no further conversations with Mr. Street at any time about this matter (Lane, I, 368, 366).

Mr. Lane's attention was called to Defendant's Exhibit 30. He would recognize "Dear Abe" as Mr. Powrie. Mr. Lane does not know what plan it was that Mr. Street refers to in that letter as having been changed. He did not mention anything to Mr. Lane about any former plan, and Mr. Lane did not know there had been any plans of any kind. He had never been consulted about the matter before his meeting with Mr. Street in White Sulphur. He cannot say that Mr. Street ever consulted him about the matter in a personal sense, save on the one occasion at White Sulphur. Mr. Lane cannot recollect the form of his assent to the proposal to his companies for advance money for legal expenses. But Mr. Lane assented that

they would do what Mr. Street asked them to do, which was to forward that seventeen hundred, eighty odd dollars. Mr. Lane did not even know or realize what the sum would be at that time. He does not recall Mr. Street telling him that he wanted the checks made to C. R. Street, agent. He would not have learned they were made to Street, agent, until "You assert that they were so made." He would not know how the check had been drawn or how the payee had been described (Lane, I, 367).

Mr. Lane has since read in the press that money was paid to Mr. Pendergast. He has made no inquiry to learn whether or not any of his company's money went for that purpose, because the matter was in the hands of people that he deemed to be competent to represent them (Lane, I, 367-368). Mr. Street apparently was the one who is supposed to have done the corruption. Mr. Lane does not know what Mr. Street has done (Lane, I, 368).

Since this happened Mr. Lane has had occasion to go through his file for the purpose of trying to find out whether or not his files might reflect anything. He cannot identify all the papers in the attorney's hand, but they gave to the federal district attorney all of the pertinent matter that passed. There is correspondence regarding the sums of money that came after the compromise was carried forward (Lane, I, 368). This company furnished the federal district attorney at Kansas City the original checks and photostatic copies of all the entries on its books relating to its payments of these funds to Mr. Street for expenses (Lane, I, 370). Mr. Lane never undertook to find out more than had been disclosed by the public press (Lane, I, 368). When Mr. Lane would be in Chicago on occasions he asked them what this sitation was. He never saw the bookkeeping of the matter until, he thinks, in June, 1939. He was curious to see if he could divine what had happened to them, where their money had gone. He does not understand to this day where it went (Lane, I, 369-370).

Mr. Lane gave instructions to the Chicago office that they furnish everything that the federal district attorney asked for. He did that immediately after it came out in the newspapers that the district attorney was investigating this so-called Pendergast scandal. They cooperated in every possible way (Lane, I, 370).

GROUP SIXTEEN.

The Occidental Insurance Company, one of this group, was not entered in the State of Missouri at the time of the rate litigation and was not involved in it. The only two of this group involved in that litigation are the Firemen's Fund and the Home Fire and Marine Insurance Company. They are under common management (Buck, I, 231).

Mr. Buck knows that a compromise settlement of the cases was made in the Spring of 1935. He did not know about the negotiations before the settlement was effected, and cannot remember when he first learned (Buck, I, 232). He knows that a decree was entered in February, 1936, on the compromise agreement. He thinks he got a copy of it, but will not be sure. He learned that a declaration of trust had been entered into by Mr. Street and Mr. Folonie for the handling of certain portions of those funds. At the time he was familiar with the terms of the trust agreement in a general way. He understood that 30 per cent was to be used for the payment of attorneys' fees and the expense of the litigation and that anything that remained out of the 30 per cent after the payment of expense of litigation and attorneys' fees was to be returned to the companies (Buck, I, 232). Mr. Buck does not know anything about a fund of $100,000.00 being raised in the Spring of 1935 for the payment of attorneys' fees. He first heard of that after the report of the federal grand jury at Kansas City this year, about March, 1939 (Buck, I, 231).

Mr. Buck has not been connected with the company for a year and a half, but he assumes the records show that they attributed this payment to Mr. Street to expenses, or attorneys' fees. Mr. Buck was familiar with the records of Fireman's Company when he was there, but he is not familiar with those records. The chief accountant keeps those records and, not being a bookkeeper himself, Mr. Buck is not as familiar with them as he might otherwise be (Buck, I, 242-243). He has not seen the file, has only glanced at the files, and cannot say if there is any record in his office as to what those remittances to Mr. Street were for (Buck, I, 242).

Defendant's Exhibit 48 (I, 234) was made by W. L. Leonard who was at the time Agency Superintendent

of the Fireman's Fund Insurance Company in Mr. Buck's office (Buck, I, 233). It is as follows:

"3/24/36

Mr. Buck: 11 06 A. M.

Please call Mr. Street before banking checks.

W. L. L.

5/11	6/11		11%	
5,739.21	6,887.05	=	12,626.26	F. Fund
1,259.22	1,511.08	=	2,770.30	H. F. Marine"

Mr. Street advised Mr. Buck that this was for the payment of expenses and he incidentally mentioned attorneys' fees (Buck, I, 242).

Mr. Buck called Mr. Street from his office in Chicago to Mr. Street's office in Chicago. First Mr. Street called Mr. Buck and said he was sending him two checks representing 11 per cent of the impounding of the Fireman's Fund and the Home Fire and Marine Insurance Company; that on receipt of those checks Mr. Buck was to send Mr. Street a check for 5 per cent of the impoundments. In the conversation Mr. Buck said "Well, what are they for" and Mr. Street said "In payment of expenses, expenses in connection with this compromise settlement." Mr. Buck said "How shall I account for these on our records" and Mr. Street said "We are going to give you a full accounting in due course and any entry you might make would be temporary anyway, but I would suggest 'legal expenses' or any other item that you think would be a proper place for it." Mr. Street did not tell witness that it was, in fact, legal expenses, but the inference was very strong. Mr. Buck asked Mr. Street if he could give Mr. Buck more details as to what these 5 per cent checks were to cover, and Mr. Street said expenses, and then referred to the agreement to pay attorneys' fees to the state. In that connection Mr. Street said "You will recall that we have agreed to pay attorneys' fees of the State representing several hundred thousand dollars." This was the first conversation that witness had with Mr. Street and, as he recalls it, he has detailed the entire conversation (Buck, I, 235-237).

Then Mr. Buck found this memorandum on the desk and called Mr. Street. He wanted to know more about it, if he could give witness any more details about what those checks covered, because he was being required,

as manager of the company, to issue some checks and he wanted a little more information about what that would cover so that he could adequately report to his home office (Buck, I, 236).

He had the 11 per cent checks before him or in his office at the time, and he assumed that that was out of the 30 per cent fund. He understood that that fund was for the purpose of the payment of attorneys' fees and expenses. That did not particularly raise an inquiry in his mind as to why he should be compelled to issue a check to Mr. Street for attorneys' fees and expenses, only to the extent that he has just stated (Buck, I, 236-237, 239).

Mr. Buck had in his mind at the time the fact that the 30 per cent was allocated for that purpose. He did not ask Mr. Street and he does not know that it particularly occurred to ask him. He had been advised that the 30 per cent of impounded premiums had been set up for that purpose. He would not say definitely that he knew the exact figure of the impounded premiums, but he knew it ran into a large figure, approximately $10,000-000.00. He knew that 30 per cent of that would be in excess of $2,500,000.00, but he didn't analyze the extent. Mr. Street had been handling this litigation ever since Mr. Buck had been in the middle West, and had been chairman of the committee, and personally Mr. Buck had implicit confidence in him, and for that reason he did not inquire into the details enumerated. Presumably Mr. Buck knew those facts and did know it. It did not occur to him, when Mr. Street asked for a 5 per cent check for additional attorneys' fees and expenses that there was $2,500,000.00 or in excess of that in the hands of Mr. Street and Mr. Folonie as trustees, for the payment of those very items and it did not occur to him as strange that he would receive 11 per cent from the trustees and then be asked to put back through a different agency, C. R. Street, Agent, 5 per cent for some unknown expense. It did not strike him as strange at all; but he did want to know more about it because he had to account to his office and he wanted to know where to put it in their records. That was all he wanted to know about it. Mr. Buck was told by Mr. Street that other companies were writing similar checks. Mr. Buck knew how much was impounded, but never stopped to calculate or consider that 5 per cent of $9,000,000.00 would

be $450,000.00. He trusted Mr. Street implicitly. The only calculation he made was that shown on Mr. Leonard's memorandum, where they show the 5 per cent and 6 per cent of their own impoundings. Mr. Buck does not know why Mr. Street telephoned him advising him of the fact that he was to pay back to Mr. Street as agent 5 per cent before witness received the check. There was no urgency or pressure about it. It was in a matter of fact sort of way (Buck, I, 237-239).

Mr. Buck does not recall whether he received a letter from Mr. Street at the time the checks were sent to him by messenger. He is not sure whether there was a letter of enclosure or not. He has not seen the files since he left the employ of the Fireman's Fund Insurance Company (Buck, I, 239). At the time they were both in the same town, each in his own office in Chicago (Buck, I, 239, 235). Mr. Buck did not write the check. He authorized issuance of the check by H. A. Bush, the assistant manager (Buck, I, 238).

Mr. Leonard had no conversation with Mr. Buck about the time when Mr. Buck came into possession of this memorandum. It represents the only communication of any sort he had from him in connection with the matter. It refers to checks for the amounts shown on the memorandum representing 11 per cent of the impoundings for the Fireman's Fund Insurance Company and the Home Fire and Marine Insurance Company. They got one check for each company; that is Mr. Buck's recollection, that they received one for each, a check for $12,636.00, payable to the Fireman's Fund, and $2,770.30 payable to the Home Fire and Marine. Mr. Buck is not sure, but he does not think the checks were with the memorandum at the time he received it. He thinks that the notation was made on it after he received it (Buck, I, 235).

Defendant's Exhibit 49 (I, 241) is a letter written by Assistant Manager Bush to Mr. Street, dated March 27, 1936. It is as follows:

> "We acknowledge checks received from you representing 11⅛ per cent of premiums impounded in the Missouri rate case for the Fireman's Fund and Home Fire and Marine, as follows:
>
> | | |
> |---|---|
> | Fireman's Fund | $12,626.26 |
> | Home Fire & Marine | 2,770.30 |

> We are enclosing checks payable to your order as agent for 5/11 of these amounts or $5,739.21 for the Fireman's Fund and $1,259.22 for the Home Fire & Marine."

Under the signature appears the following:

> "16 2/3 Per cent impounded premiums as of May 1, 1935. See attached."

Mr. Bush is now dead (Buck, I, 242).

The cash book of the Fireman's Fund, under the caption "Insurance Fund, agency cash," for the month of March shows under "Cash Paid and Received" the, item of 11 per cent in and 5 per cent out. The nature of the items are designated as "Missouri 16 2/3 Imp. 11 per cent dividend account." Under "Cash Received and Paid, Amount Paid" the two items are $12,626.26 and immediately under it, $5,739.21 (Statements of Counsel) (Buck, I, 243-244).

The only answer Mr. Buck can give to the question as to why none of the files or records seem to show what the 5 per cent was for is that they were given to understand there would be an accounting. He does not know and was not told when that was coming. They report monthly to the home office, and had no assurance that it would come within the month. As he recalls it, it did not come within the month. He reported to the home office and as he recalls, he directed a letter to the first Vice President of the company the day these checks were drawn, advising him of the fact. Mr. Buck does not have a copy of that letter with him. The Fireman's file should show that. It is Mr. Buck's recollection that he wrote the letter to San Francisco the day these checks were issued, explaining the entire transaction, just as he had explained to counsel, to the home office (Buck, I, 244-245). He did not put it on his books of account, because the letter was in the file and the file would support the item of the account. Generally when he paid attorneys' fees he entered it on his books as attorneys' fees and to whom it was paid. He did differently in this case because he did not know it was attorneys' fees, or legal expenses, or anything else, except as indefinitely stated by Mr. Street, and he expected an accounting which would enable them to properly place the item where it should be. They put it on their original books of account in the regular entries of their daily business. They

never received any accounting from then on (Buck, I, 245). When that accounting did not come, Mr. Buck made no effort to find out what the disbursement was for, because the matter was in process of closing out, and they understood there was still some of the 30 per cent in the hands of the custodian, or wherever it was, that would eventually be refunded to them, and he assumed that when that was done they would have that accounting. He did not understand there was still money in that fund for the payment of attorney's fees and expenses. There was still money in their hands, either the custodian or the trustees. They expected to be eventually reimbursed, and when that was done, they would have a final accounting (Buck, I, 246).

GROUP SEVENTEEN.

All of these companies were involved in the Missouri rate litigation (Cooney, III, 14). There is a common management of the group (H. Clark, I, 249). Connected with this group is the Pittsburgh Underwriters, which is not an insurance company. It is an agency, not a corporation. It does not carry the risk. It had a separate impoundment similar to the Underwriters Grain Association. It's separate impounding was because the companies for which it wrote policies did not all have cases. Because there was a separate impoundment, there was a separate restitution check made to the agency even though it was not a plaintiff in any case (Cooney, III, 14-15). This group had a Western department of which Herbert A. Clark, Vice-President, was the head. None of the Missouri rate litigation was handled out of the home office to Mr. Cooney's knowledge, except the home office accounting. All of these matters in connection with the Missouri rate litigation were handled through the Western department, and then as the accountings for each month came in, the totals of receipts and disbursements would be shown (Cooney, III, 15).

A.

At the Chicago Office.

Defendant's Exhibit 52 (I, 258) is a letter dated March 9, 1936, signed "C. R. Street, R. J. Folonie, Trustee." It is addressed, "Mr. Clark" in handwriting. But, the rest of the letter, including the signatures, is in typewriting

except that the sum $18,990.85 is inserted in handwriting in a space left by the typist for that purpose. It is as follows:

> "We inclose check for $18,990.85, being 6%, in figures, of the amount of your impounded premiums, in Missouri as of May 1, 1935. This is a distribution out of the 30% fund turned over to us as trustees for the discharging of company liability in connection with this rate litigation—we think this can be done without reducing the fund below the limits of safety."

Below the typewritten signatures appears the following in handwriting:

		30%
Firemen's	$ 7214.88	$ 2164.46
Girard	2184.30	655.29
Mechanics	464.59	139.38
Milwaukee Mechanics	4065.27	1219.58
National Ben Franklin	1631.92	489.58
	$15,560.96	
Concordia	3,429.89	1028.97
	$18,990.85	$5,697.26

In this letter (Exhibit 52) Mr. Clark received a check for $18,990.85, which represented a 6 per cent refund out of the 30 per cent fund for his group of companies (H. Clark, I, 259).

Defendant's Exhibit 53 (I, 260) is a letter which Mr. Clark wrote to Miss Bircher in regard to these additional checks (H. Clark, I, 264). Miss Bircher is the cashier (H. Clark, I, 264). The letter is as follows:

"March 13, 1936

Miss Bircher:

Re: Missouri 16-2/3 Impounded Premiums

Enclosed you will please find checks aggregating $18,990.85 from C. R. Street and R. J. Folonie, Trustees.

These checks, as you will note from the attached letter from the Trustees, represent 6 per cent of the

amount of Loyalty Group companies' impounded premiums in Missouri as of May 1, 1935. This is a distribution out of the 30 per cent of the impounded fund which was turned over to the Trustees for the discharging of company liabilities in connection with the Missouri rate litigation, under which companies were required, by Court order, to impound 16-2/3 of the premiums collected during the pendency of the litigation. The checks payable to our various companies, and representing the total amount remitted to us, are as follows-

Firemen's	$ 7,214.88
Girard	2,184.30
Mechanics	464.59
Milwaukee Mechanics'	4,065.27
National-Ben Franklin	1,631.92
Concordia	3,429.89
	$18,990.85

While these checks do not represent exactly 6 per cent of the amount of our impounded premiums as shown by our records as of May 1, 1935, I am advised by the Trustees that they do represent 6 per cent of the amount of our impounded premiums as of that date as shown by the Court records.

We have been requested by the Trustees to remit to them for attorneys' fees and expenses 30 per cent of the amount represented by the enclosed checks. Will you, therefore, please issue checks for 30 per cent of the amount set opposite each company as indicated above, making said checks payable to C. R. Street and R. J. Folonie, Trustees. To cover this transaction checks should be drawn as follows-

Firemen's	$2,164.46
Girard	655.29
Mechanics	139.38
Milwaukee Mechanics'	1,219.58
National-Ben Franklin	489.58
Concordia	1,028.97
Total	$5,697.26

H. A. Clark,
Vice-President"

HAC-EP

The following notations appear upon the letter.

Opposite the typewritten figures in the last paragraph of the letter appear figures in handwriting as follows:

40820
40808
28383
22955
26193
20358

In addition thereto there is stamped:

"Paid Mar 13, 1936" also "Check No.," and in handwriting appear the words "Void 3-25."

At the time that Mr. Clark got the 6 per cent check as shown by Mr. Street's letter of March 9, 1936, the Actuarial Committee had authorized that payment (H. Clark, I, 261). Under date of March 9, Mr. Street brought this letter (Defendant's Exhibit 52) and these checks for $18,990.85 into Mr. Clark's office and Mr. Street asked Mr. Clark to give him 30 per cent of that amount which Mr. Clark did. Mr. Street said he wanted the 30 per cent of that 6 per cent for legal expenses. Mr. Clark presumed he wanted it for expenses of "our own attorneys." He knew that the 30 per cent was specifically allocated for that purpose, and had just gotten a return of 6 per cent, and the committee had found that they could safely return 6 per cent.

Q. And yet here was Mr. Street privately in your office, asking you to give him a check for 30 per cent of the 6 per cent for attorneys' fees?

A. Yes, sir.

Mr. Street did not tell what attorneys it was for. He said for attorneys' fees. Mr. Clark thought at that time that it was to be a part of this payment to the State and to the insurance department that was agreed upon in the compromise settlement (H. Clark, I, 261-262).

The committee had figured the 6 per cent distribution as being a safe margin, and in order to figure that they had to calculate the money that was to come out of it, and they did calculate it and included the State's attorneys and also the companies' attorneys. When Mr. Street came privately to his office to ask for 30 per cent,

Mr. Clark asked Mr. Street why he did not take that out of the 30 per cent trust fund and Mr. Street said that he wanted the money for expenses, not only in the federal court cases but in the state court cases, and he felt he had no right to take anything out of the trust fund to pay any expenses in the state court cases. That seemed to be a plausible reason; so Mr. Clark gave him the checks. Mr. Street said it was to pay attorneys in both the federal and state court. Mr. Clark does not know how much of the 30 per cent of the 6 per cent Mr. Street was going to allocate to the federal court, but he said he was going to give some to the federal court attorneys (H. Clark, I, 262).

There were companies that had the same issue in the state court that these companies had in the federal court. Mr. Clark would not be paying out of the state court the expenses that were incurred by other companies. He probably should have elaborated on that a little bit. Mr. Street made the further statement that when this matter was finally concluded they would have an adjustment as between the companies in the state court and the federal court cases as to expenses. He was asking Mr. Clark's company to forward money on account of a settlement of similar litigation for other companies in the state courts, and then afterward they would pay it back to him. Mr. Clark did not ask Mr. Street why he did not go to the companies that were interested in that litigation to get his advance. He assumed at the time that the bills that the attorneys had rendered would be common in both the state and federal court cases, and that Mr. Street probably would maybe have one set of bills to pay that applied to both the federal and state cases, and that that is what he wanted the money for.

Q. You did understand that he wanted your company to put up some money because there were payments to be made in the state court on account of a similar case brought by other companies?

A. Well, he told me he wanted me to pay for expenses in both the state and federal court. I didn't go into the matter with him. I just assumed that it was a reasonable request without going into all the particulars. I just gave him the check (H. Clark, I, 275-276).

Subsequently Mr. Street returned those checks for the 30 per cent and brought back another remittance of

5 per cent, Mr. Clark thinks, and asked Mr. Clark to void the checks that Mr. Street had theretofore given to Mr. Clark, and to give Mr. Street checks for 5 per cent of the impounded premiums (H. Clark, I, 261). After the 6 per cent Mr. Clark received an additional 5 per cent which came to him (H. Clark, I, 263-264). The check (Defendant's Exhibit 52) was voided and the 11 per cent check was issued (H. Clark, I, 259).

Defendant's Exhibit 54 (I, 266) is a letter that Mr. Clark wrote to Miss Bircher some eleven days subsequent to the 6 per cent check (H. Clark, I, 265).

The letter is as follows:

"March 24, 1936

Miss Bircher:

Missouri 16-2/3 Impounded Premiums

Under date of March 13, 1936 we received from C. R. Street and R. J. Folonie, Trustees, checks aggregating $18,990.85, representing approximately 6 per cent of the amount of Loyalty Group companies' impounded premiums in Missouri as of May 1, 1935. This was a distribution out of the 30 per cent of the impounded fund which was turned over to the Trustees for discharging of the companies' liabilities in connection with the Missouri rate litigation.

You will find attached a further remittance from the Trustees amounting to $18,389.04, which represents approximately an additional 5 per cent of the amount of Loyalty Group impounded premiums as of May 1, 1935. The checks, for the several companies, making up this amount, are as follows-

Firemen's	$ 6,012.40
Girard	1,820.25
Mechanics	387.17
Milwaukee Mechanics'	3,387.72
National-Ben Franklin	1,359.93
Concordia	2,858.24
Superior	2,233.47
Pittsburgh Underwriters	329.86
	$18,389.04

The Trustees have returned to us, and you will find them attached, the checks which we issued un-

der date of March 13, 1936 aggregating $5,697.26, and have requested in lieu thereof, that we make check for each of our companies, payable to C. R. Street, Agent, for 5 per cent of the amount of our impounded premiums as of May 1, 1935, this to be payment on account of our proportion of attorneys' fees and expenses in connection with this litigation. Please issue checks accordingly and indicate on this memorandum the amount of the check issued for each company of our Group.

H. A. Clark,

HAC-EP Vice-President"

The letter is in typewriting but under the heading, "Attorney Fees 5%," handwritten figures appear opposite the tabulated figures in typewriting contained in the letter as follows:

6162.33
1820.25
387.17
3387.72
1359.93
2858.24
1015.21

16990.85

Mr. Clark's attention was called to the fact that the letter (Defendant's Exhibit 54) stated that the trustees had returned the checks and "have requested in lieu thereof." Mr. Clark said that the trustees did not request that; that is not a correct statement, but Mr. Street personally did that by personal call (H. Clark, I, 264-265). And then the checks were issued for their respective amounts due from each one of witness' companies (H. Clark, I, 267).

Mr. Clark gave the check for 30 per cent of the 6 per cent to Mr. Street as agent. He supposes he was "our agent" (H. Clark, I, 263). When Mr. Clark made the checks to Mr. Street as agent, he does not know what Mr. Street was his agent to do. He made the checks out that way because Mr. Street asked him to do it. That is the only reason he made it out payable to Mr. Street, who just asked to have the check made out in that way (H. Clark, I, 279).

Mr. Clark understood all along that the 30 per cent was to pay the state's attorneys and other expenses of this litigation and the fees of the companies' attorneys and the remainder, if any remained, was to be paid over to the companies (H. Clark, I, 257). He recalls that in 1936 the decree was entered, and that following that a declaration of trust was made by Folonie and Street. He recalls that 20 per cent was allocated to policyholders, 30 per cent for the payment of expenses and 50 per cent outright from the custodian to the companies. He was not familiar in a general way with the terms and provisions of the declaration of trust (Clark, I, 255-256). He never saw it (H. Clark, I, 256). Mr. Clark knew that in March, 1936, the companies had paid approximately $450,000.00 to Mr. Street for attorneys' fees. Mr. Clark cannot recall specifically that at some time in 1936 a bill had been allowed against the trustees for Messrs. Folonie and Morrison for services in 1935. He probably knew it at the time. Of course, $450,000.00 in 1936 ought to pay a lot of attorneys' fees; but, of course, as Mr. Clark understands it, they also had the expenses of the State to pay out of this fund. Mr. Clark knows of no other litigation pending against the insurance companies in the state court beside the rate case brought by those of the insurance companies which did not join the federal case (H. Clark, I, 277).

B.

At the Home Office.

Previous to "this difficulty," that is, previous to 1939, no person ever transacted any business with Mr. Cooney, the President, in connection with the Missouri rate litigation (Cooney, III, 15). In 1939, Mr. Cooney contacted Mr. Clark to find out what it was about. He talked to Mr. Clark on numerous occasions, attempting to find out what Mr. Clark knew about the settlement, and Mr. Clark told Mr. Cooney just about what Mr. Clark testified to. Mr. Cooney has seen a portion of Mr. Clark's testimony. It appeared in one of the local papers, or Mr. Clark dropped him a note; but Mr. Cooney does not know that Mr. Clark went into all the details of the testimony. Mr. Cooney cannot state what Mr. Clark said (Cooney, III, 15-16).

Mr. Cooney will do the best he can to state what Mr. Clark told him. Mr. Cooney asked Mr. Clark if he

had any personal knowledge of what became of that 5 per cent that was paid to Mr. Street as agent and Mr. Clark said he did not. Mr. Clark did not state that he had helped to assemble the checks for Mr. Street. The president of the company does not know that he asked Mr. Clark the specific question as to whether the Actuarial Committee had any knowledge concerning these checks, but it is certain that the members of the Actuarial Committee knew that these checks were to be received. Mr. Clark, being a member of it, must have known it. The president of the company of which Mr. Clark is vice-president knows that that company gave checks, and to the best of the president's knowledge, Mr. Clark signed the checks; so Mr. Clark must have known it. The president's conversation with Mr. Clark was after the matter became public knowledge, and therefore he did not question Mr. Clark as to the details of the accumulation of the checks. What Mr. Cooney was personally interested in was knowing how much Mr. Clark knew, and Mr. Clark said he knew nothing of the distribution of this so called 5 per cent (Cooney, III, 16-18).

GROUP EIGHTEEN.

Mr. Smalley is generally familiar with the Missouri litigation. It is his recollection that his company and some 136 other companies filed suit in the federal court in Kansas City about 1930 and that those cases were pending until a settlement was made in 1935 and approved in 1936 (Smalley, II, 37-38).

Mr. Smalley heard that the cases were settled. It was simply by word of mouth. Someone might have said they understood the things were getting out of the way. He cannot tell whether an article concerning it appeared in some of the insurance journals. His recollection is that he first heard of the settlement by a letter from the Subscribers Bureau in February, 1936, and as he remembers it, the letter or the exhibit attached thereto, set out that the cases had been settled and the terms of the settlement; the companies would immediately receive 50 per cent of the impounded premiums up to May 1, 1935, in cash and bonds, and 20 per cent to policyholders; 50 per cent came to them and the 30 per cent to be held by Mr. Street and Mr. Folonie for expenses; the rest to be returned to the companies if they did not use it for expenses (Smalley, II, 40). He was familiar

with that settlement, at least in February, 1936. He read that letter (Smalley, II, 40). His recollection is that he received information that these cases were settled in February, 1936. A decree was entered approving the settlement February 1, 1936. He could not find any letter or statement or anything of that kind notifying his company, and his memory will not enable him to answer whether he heard that an agreement had been entered into in May or June of 1935 (Smalley, II, 39). No one connected with the Glens Falls Insurance Company directly handled its law suit. As far as Mr. Smalley remembers, that was handled by the Subscribers Actuarial Committee and the subcommittee on behalf of the companies, and he understood that Mr. Street was chairman of that (Smalley, II, 38). He thinks that Mr. Street is the only man he can recall as being the head of the committee of the Subscribers Actuarial Bureau and to his recollection Mr. Street really handled the litigation (Smalley, II, 38). It is the understanding of Mr. Smalley that Mr. Street personally handled the bulk or took upon his shoulders the bulk of the responsibility in handling the cases, and he should say that Mr. Street is bound to have done that, representing this company along with the others (Smalley, II, 38).

They made this check to C. R. Street, Agent. Mr. Smalley does not know whose agent Mr. Street was. Mr. Street might have been Mr. Smalley's company's agent for the purpose of handling these legal affairs (Smalley, II, 51-52). At the time Mr. Smalley gave this 5 per cent check to the order of C. R. Street, Agent, he knew that his company had a suit in Missouri in connection with this rate controversey. He knew that the court had impounded his company's funds (Smalley, II, 49). He had met Mr. Street once or twice in meetings in the years gone by. Mr. Street would not know him if he met him on the street. Mr. Smalley never by telephone, telegraph, letter or personal talk ever employed Mr. Street or asked Mr. Street to do anything for his company in connection with this Missouri rate litigation (Smalley, II, 50-51). He never authorized Mr. Street in any way to pay any money to Mr. Pendergast or Mr. O'Malley or Mr. McCormack, or for any purposes whatever except as might be inferred in paying legal expenses (Smalley, II, 51). Mr. Smalley never knew or saw, and never wrote, telegraphed, telephoned, or in any way communicated with Mr. Pendergast. He never met Mr. McCormack

and never wrote, telegraphed, telephoned, or communicated with Mr. McCormack in his life. He did not personally know Mr. O'Malley, the Insurance Commissioner, and never wrote, telephoned, telegraphed or communicated with him in any way concerning the Missouri rate situation (Smalley, II, 51).

Mr. Smalley has not looked it up, but he thinks his company is a subscriber, or member, of the Missouri Inspection Bureau (Smalley, II, 39). He does not know whether the Western Inspection Bureau or the Subscribers Actuarial Bureau brought the law-suit, but whatever bureau it was, these companies were probably informed and told that their interests would be looked after, and they acquiesced in it (Smalley, II, 52). This company never directly contacted Mr. Folonie, the attorney, in any way. Mr. Smalley imagines that the Subscribers Actuarial Bureau did so for his company. He supposes that they knew that that committee was acting as their agent in doing that. They knew that the committee represented all of the companies and would look after their interests in the matter of engaging counsel. They made no objections to it (Smalley, II, 51). Mr. Smalley's company naturally had to agree to this settlement. He says they had to agree. They were riding along with the rest of them. There was nothing to force them; they did agree with it. He means they made no objection to it (Smalley, II, 41).

Mr. Buddy, the Vice-President, has been on his vacation. Mr. Smalley thinks he got home to Glens Falls last night or yesterday noon or afternoon sometime. Mr. Smalley does not think that anyone else that he knows of connected with his company knows anything about this situation, or knows anything about the matters of which counsel has inquired (Smalley, II, 48).

Mr. Smalley's recollection is that either Mr. Haid or Mr. Erskine, of the Insurance Executives Association, called him on the phone and asked him to send a check for 5 per cent for legal expenses. That is all he remembers of what was said. Sending the 11 per cent check was not mentioned as he remembers it. His company had not received the 11 per cent check at that time. On March 20 the 5 per cent check was drawn. His company's records show that it received the 11 per cent check on March 23 or 24 and he does not remember that anything was said about the 11 per cent check at the time

of the telephone call (Smalley, II, 43). When Mr. Smalley received this 11 per cent check, it was a complete surprise to him. He had already sent the check to Mr. Haid, payable to Mr. Street, three or four days before (Smalley, II, 48). Mr. Smalley's recollection is that Mr. Buddy was in his office when the telephone call came in. If not, he came in very shortly afterward and witness told him of the conversation. Mr. Smalley has no recollection of any conversation, what it particularly was. They probably discussed this situation and whether or not they should pay the money. What they said, Mr. Smalley does not know (Smalley, II, 48).

The check represents 5 per cent of the total impounded premiums for both companies. Mr. Erskine, or Mr. Haid told Mr. Smalley that this check was desired for legal expenses. Mr. Smalley's company had not before paid any legal expenses in that manner in this particular case. He cannot answer whether legal expenses have been collected by assessments of the Missouri Inspection Bureau or other similar organizations. He does not know that any call was ever made upon them for legal expenses in connection with this case. He does not remember (Smalley, II, 43-44). It did not occur to Mr. Smalley as unusual that they would be calling the next month and asking him for a check for 5 per cent of his impounded premiums for that purpose—not after he read that paragraph in the letter where it told what the expenses covered. He did not stop to calculate what 30 per cent of $9,000,000.00 is. He did not make any figures at all. He did not think of it in that way at that time. 30 per cent of $9,000,000.00 apparently would be $2,700,000.00 if the attorney's arithmetic is correct. That naturally would pay a lot of expenses. Mr. Smalley did not know anything about what the expenses had been and did not ask the gentleman that called him about these things (Smalley, II, 44). He did not ask them why they needed this additional money nor whether the trustees had spent the whole 30 per cent. He merely sent it to them because they asked him to. He was asked if he ordinarily sent out money from his company just because someone asks him to "It depends on who the somebody is," was his reply. He would do it any time that Mr. Haid or Mr. Erskine asked him to. He would not question what they would ask him. He supposes it was his responsibility to try to keep down expenses of his company as much as possible (Smalley, II, 45).

Defendant's Exhibit 141 (II, 46) is this company's order on the cashier for a check for $2,877.31. Mr. Smalley did not write the order, but it bears his initials and was ordered by him (Smalley, II, 45).

Defendant's Exhibit 141 (II, 46) is dated March 20, 1936, and directs that the check of the Glens Falls be payable to C. R. Street, Agent, for legal expenses, Glens Falls and Commerce, and to charge to Missouri Rate Case Legal Exp.

Defendant's Exhibit 142 (II, 53) is a letter dated March 20, 1936, addressed to J. D. Erskine, Secretary of the Insurance Executives Association and is as follows:

> "In conformity with our telephone conversation, we are inclosing herewith, check for $2,877.38, payable to C. R. Street, Agent, which we understand represents the share of the Glens Falls and Commerce Insurance Companies in legal expenses in connection with the Missouri rate litigation matter."

The names of the two companies are stamped upon the letter with the written figures thereafter as follows:

"Glens Falls Insurance Co.	$2,490.85
Commerce Insurance Co.	386.53
	$2,877.38"

A further written notation on the letter is as follows: "Proportion to be refunded by Commerce, $386.53, Refunded 3/23/36." Another written notation on the letter is as follows: "Ck., 63675 3/21/36"

The check was approved by Vice-President Buddy, who was in the office at the time of the telephone conversation. It is the custom of this office, when money is paid, that some other officer approves it, and the cashier then draws the check (Smalley, II, 47).

The reason for two officers signing the authorization for issuing checks is because the bylaws of the company call for it. Mr. Smalley would assume that the reason the bylaws were passed is that there would be at least two men who would know certain checks are being paid out, and one man does not have complete control of paying out money (Smalley, II, 49). Mr. Smalley supposes that the object of having it approved by two officers is protection. He, himself, sometimes wonders why it is done

(Smalley, II, 47). He was asked what protection it is if the officers do not take any pains to find out what it is about, and he answered "Well, we do."

Q. But not in this case?

A. Well, is that a slam at me for not finding out? I told you I had perfect faith in Mr. Haid.

Q. It is a mere question, * * * it may be a slam, the court will pass upon that * * * but it is a question as to the fact. Is the object of having two officers pass it, in order to get the judgment of two officers as to whether it is a proper charge against the company?

A. I suppose it is.

Q. That implies they will look into it?

A. Well, it happened in this particular case * * * Mr. Buddy, as I recall, was in the office at the time this particular request came in and I told him to draw the card and I would order it and I told him of the conversation. He understood it and he O.K.'d the card, and the check was signed, might have been signed, by any two of the officers. Now don't understand that all of our checks require two signatures. The dividend and the salary checks only, require one signature, but must have one imprinted signature.

Q. I understand that no check requires two signatures if it is a check that by an established practice is authorized in advance. It is only something that has to be authorized at the time that requires two signatures.

A. The ordinary check for paying any kind of bills for goods or for assessments of bodies are signed by two officers (Smalley, II, 47-48).

Mr. Smalley's company received back 50 per cent for both companies. Then later it got back 11 per cent, $5,478.00 which is 11 per cent of the Missouri impounded premiums, April 30. It got back out of that lawsuit altogether those two per cents 50 per cent and 11 per cent. When Mr. Smalley paid this $2,877.38 to C. R. Street as Agent they knew the whole amount of $57,500.00 was in controversy (Smalley, II, 49-50). And so he knew when he paid out the $2,877.00 to Mr. Street as agent it was on account of a lawsuit where his company had $57,000.00 of its money tied up (Smalley, II, 50). They charged the $2,877.00 to legal expenses, and it shows on the record. He did that at the time he gave the check. "Legal expenses," it is, on the order. At the time Mr.

Smalley did it he paid it to legal expenses in a lawsuit where his company had $57,000.00 of its money tied up; so he did look into it and knew what he was paying the money for. It was for legal expenses in a lawsuit (Smalley, II, 50). At the time he received this 11 per cent, Mr. Smalley had received the 50 per cent; so at the time he paid the $2,877.00 he had already received in that lawsuit some $28,000.00; so he was paying legal expenses in a suit in which the company had just recovered a whole lot of money (Smalley, II, 50).

He has never heard that the money was used in high political places in Missouri to obtain the settlement and knows nothing about that (Smalley, II, 48).

GROUP NINETEEN.

On March 23, 1936, Mr. Haid came to Mr. Hubbard's office and left a check with him from R. J. Folonie and C. R. Street as trustees. Mr. Hubbard's office was then located at 111 Williams Street, about three blocks from Mr. Haid's office (Hubbard, II, 7-8). Mr. Hubbard's recollection is that Mr. Haid said he had a check for him, handed him the check, and said "I want a check to C. R. Street, as Agent, for forty some hundred dollars." Mr. Hubbard is not sure whether Mr. Van Horne was in the room. He does not think he noted that the check came from R. J. Folonie and C. R. Street, trustees, but would say that the memorandum (Defendant's Exhibit 100, I, 459) which shows such to be true, is a correct statement (Hubbard, II, 8). Mr. Street and Mr. Folonie as trustees sent them the 11 per cent which was credited on the books and they gave back 5 per cent to the order of C. R. Street, charged against the same account (Van Horne, I, 457). Mr. Hubbard either delivered the check or caused it to be delivered to Mr. Haid that day. Mr. Haid did not tell Mr. Hubbard the nature of the expense represented by the check and Mr. Hubbard did not know. He made no further inquiry (Hubbard, II, 8). Mr. Hubbard was asked if, when he made the check to C. R. Street as agent, he intended to constitute Mr. Street as his agent for the purpose of disposing of that money. Mr. Hubbard answered that he thinks he did not give any thought to it at all. He simply made it the way that Mr. Haid asked (Hubbard, II, 9).

Defendant's Exhibit 100 (I, 459) is a memorandum dated March 23, 1936, directed, "George C. Bowers, *re* Missouri refund 16-2/3 per cent case," signed by John

R. Van Horne. It states that on March 23, Mr. Haid called to see Mr. Hubbard, left a check from Mr. Folonie and Mr. Street, trustees, to the order of Globe and Rutgers Fire Insurance Company for $6,276.18 which, he had stated, was 11 per cent of the Missouri impounded premiums; that Mr. Haid requested a check to the order of C. R. Street, agent, for legal expenses for $2,852.81 which, he states, represented 5 per cent of the Missouri impounded premiums. A notation in ink on the memorandum is as follows: "Trustee a/c Mo Imp Prem-Rehab."

Upon inspecting the book entry "Trustees Account, Missouri Impounded Rehab," Mr. Van Horne said that it was charged against the 11 per cent check, which was $6,200.00 received from the trustees, so that the $2,800.00 was charged in rehabilitation, which came under his personal supervision against that specific amount (Van Horne, I, 457). Mr. Van Horne dictated defendant's Exhibit 100. George C. Bowers is the comptroller of the company. The purpose of the memorandum was to show the disposition of a check which was brought into the office and delivered to Mr. Hubbard by Mr. Paul Haid. Mr. Hubbard sent for Mr. Van Horne, handed him the check and said, "This is a rehabilitation item. Mr. Haid wants a check to the order of C. R. Street, Agent, for the sum set forth there, 5 per cent of our Missouri impoundings." Mr. Van Horne had the check prepared and signed by Mr. Hahn, the secretary, and by Mr. Hubbard, the president, and came out and dictated the memorandum to Mr. Bowers, the comptroller. Mr. Van Horne was not present when Mr. Haid called to see Mr. Hubbard; Mr. Hubbard sent for him, and Mr. Haid was there. He heard no conversation between Mr. Haid and Mr. Hubbard. They were in there together when he came in. Mr. Hubbard gave Mr. Van Horne certain directions and the latter understood he was to make a memorandum (Van Horne, I, 454-455).

Defendant's Exhibit 102 (I, 461) is a check requisition dated March 23, 1936, calling for a check for $2,852.81 to the order of C. R. Street, agent, in payment of legal expenses a/c Missouri refund, charged to trustees a/c Mo Imp Prems-Rehab.

There has been no accounting for the $2,852.81 check to C. R. Street, agent, except the receipt of a similar amount from Mr. Street in December, 1937, which they treated as an offset item. Mr. Van Horne believed the 1937 check was from C. R. Street. The memorandum

was signed "C. R. Street" (Van Horne, 456). Mr. Van Horne's recollection is that the transmitting letter in 1937 was signed by C. R. Street (Van Horne, I, 457).

Mr. Van Horne, as counsel for this company, was familiar with the rate litigation pending in Missouri. He knew that settlement had been made in May, 1935, but was familiar with the terms and provisions of that contract only in general. He knew that 20 per cent went to policyholders, 30 per cent was allocated for the payment of attorneys' fees and expenses, and 50 per cent was to go outright to the companies from the custodian (Van Horne, I, 453-454). He knew that 30 per cent had been allocated for the payment of expenses. He recognized that 11 per cent, which he saw came out of the 30 per cent as a dividend, was a distribution for the trustees. The trustees were to pay expenses and (witness presumed) to account at the end. When Mr. Van Horne saw that they were called upon to issue a 5 per cent check for legal expenses in connection with the Missouri litigation, he said nothing at all about it to Mr. Hubbard (Van Horne, I, 455). These companies knew nothing about the $100,000.00 fund being raised. They first heard of it recently in the public press (Van Horne, I, 454). Asked whether it struck him as strange that they would be paying out 5 per cent for legal expenses when they had just received 11 per cent from the fund which had been allocated primarily for that purpose, the balance to go to the companies, Mr. Van Horne said that he presumes Mr. Street must have had some reason for making the request as chairman of the committee and the man in charge of Missouri rate case. He did not know it was irregular. He knew that ordinarily, when the fund was in the hands of trustees for the payment of expenses, it would be used for that purpose and that there would be no dividends until the expenses had been paid (Van Horne, I, 455). In most cases the usual bills for legal expenses would come to the attention of Mr. Van Horne as counsel for examination and then be forwarded to general counsel for final approval; but in this case he was not consulted. It was being handled by a committee. Mr. Van Horne does not know to whom they were paid (Van Horne, I, 456).

The distribution was by a check signed by two of the trustees and the payment back was to one individual as agent. Mr. Van Horne has no knowledge as to why

Mr. Street wanted this as a separate item and he made no inquiry. He did not call it to Mr. Hubbard's attention that the trustees were supposed to do the accounting for this 30 per cent fund. He has not the slightest knowledge why it came to Mr. Street as agent. He does not know as whose agent Mr. Street acted—he presumes, of course, as agent for the companies in the Missouri impounding case for the payment of these legal expenses (Van Horne, I, 455-456). Mr. Hubbard had no prior knowledge whatever of this transaction, and it did not strike him as being in any way peculiar or out of line that the 5 per cent check was made to C. R. Street as Agent (Hubbard, II, 8).

Asked whether he knew that the trustees were in charge of the 30 per cent, Mr. Hubbard said he really knew very little about it, because he was out of the business from 1923 until the first of 1935, Globe and Rutgers having been in rehabilitation. The company had been out of business for about eighteen months and this particular matter was really what they called a rehabilitation matter. It was in connection with the old estate of the Globe and Rutgers, not with the new operations, and witness knew nothing about the Missouri situation because he had not been in it at the time (Hubbard, II, 8). Globe and Rutgers became impaired and went into the hands of the Superintendent of Insurance while this rate litigation was going on, partly on account of the depression in the value of its securities. For about eighteen months it was not permitted to write insurance at all. It reorganized under the Superintendent. They had to put in more money to do that. When the Superintendent of Insurance required Mr. Jameson, the former president, to go out, that is what brought Mr. Hubbard in (Hubbard, II, 9).

GROUP TWENTY.

In 1935 and 1936 the companies comprising the Great American group were:

1. The Great American,
2. The American Alliance,
3. The Massachusetts,
4. The Rochester American,
5. The Detroit Fire and Marine,

6. The County Fire of Philadelphia,
7. The American National of Columbus,
8. The Great American Indemnity of New York.

The companies that were doing business in Missouri at that time were:

The American Alliance,
The County Fire,
Detroit Fire and Marine,
The Great American,
The Massachusetts Fire and Marine.

So far as Mr. Waldron knows, the others were not doing business in Missouri or involved in this litigation (Waldron, I, 211).

A.

Detroit Fire and Marine Insurance Company.

The Detroit Fire and Marine Insurance Company is a part of the Great American group, but Mr. Waldron is not an officer of the Great American. The Detroit Fire and Marine in the Central West operates just as though it were an independent company. It is a friendly competitor of the Great American, with which it competes just as freely as it does with any other company you might name. The Great American holds the majority of its stock, but there is no common management in the central West. There is in the East and on the Pacific Coast (Waldron, I, 206-207).

They issued the check (Defendant's Exhibit 43, I, 209) at Mr. Street's request; Mr. Waldron cannot recall what kind of a request. It was either a letter or a memorandum. Mr. Waldron paid very little attention to this Missouri litigation, and cannot locate this request, but they certainly got a letter from Mr. Charles R. Street (Waldron, I, 207). They got no information whatsoever as to what the check or the expense item was for. Mr. Waldron most emphatically did not know, and had no idea or information as to what expense it was chargeable to at the time he issued the check. He made the entry on their books. They had to do that, of course (Waldron, I, 207-208). The entry made on the books was in payment of 5 per cent of the total Missouri impounded premiums, $312.00, Detroit Fire and Marine

Transfer Account, $587.00. It was charged to expense in connection with the litigation; but Mr. Waldron had no information as to the nature of the expense, except that he recalls a communication, maybe two or three or six months or a year before, about expense in connection with litigation, enumerating a half dozen things. He presumed it was in connection with that. He is not sure if at that time he was familiar with the fact that a settlement had been made of the insurance litigation. He did not pay much attention to that litigation. It was a nightmare to them. They had practically ceased doing business in Missouri in the year 1932. They did not have a large amount involved, and they had lost all interest in it. Whenever they tried to follow the intricacies of the case, it was like being lost in a mystic maze, and they did not consider that the amount they had involved was worth the time and effort to try to untangle it. The first he knew that a settlement had been made was what he read in the insurance journals. He does not know when they came out. He did not know that 30 per cent had been allocated for the purpose of paying expenses in that settlement. He was not interested to the extent of trying to find out, nor how much money they had coming. He was not interested enough to pay attention to the fact that 5 per cent of the total impounded premiums would amount to $450,000.00. He depended upon their auditor to figure that out, and when the auditor made out the check requisition and presented it, and Mr. Waldron considered that their total impoundings were only about $17,000.00 or $18,000.00, roughly figured, and this check was so small, and he having implicit confidence in Mr. Street, knowing that Mr. Street had carried on this litigation fifteen or sixteen years, they concluded that there was nothing for them to do but send Mr. Street the check, and Mr. Waldron sent it. It was not much of a check. They quit the state or retired from the State of Missouri in the spring of 1935, officially, although they did have very small writings, and retired from Missouri, that is, actively, in 1932 (Waldron, I, 210-211).

Mr. Reekie, the vice-president and secretary, countersigned the check (Exhibit 43) because Mr. Waldron is the executive officer of the company. Mr. Reekie is no longer very active in Missouri. Mr. Waldron said it was all right or something like that, and Mr. Reekie signed it. Mr. Waldron told him it was something that Mr. Street had asked for, to send over 5 per cent. That

was all Mr. Waldron knew and all Mr. Reekie knew about it. There was no discussion as to what it might be for, except that it might be for expenses and they would have an accounting later. So far as Mr. Reekie remembers, he got the information that they would have an accounting later from the Western Underwriters' Association. He has no file of correspondence and there are no files in his office in regard to this check that he knows of. He remembers no discussion or letters that were sent to him in regard to the check. Mr. Reekie retired in 1933, but his duties were light and he had no responsibility and he has no knowledge whatever other than what he has stated (Reekie, I, 212-213).

B.

Companies under Common Management.

The companies composing this group under common management are: The Great American Insurance Company, The American Alliance Insurance Company, The American National Insurance Company, The County Fire Insurance Company, The Massachusetts Fire and Marine Insurance Company, The Rochester American Insurance Company, The Liberty and Security Company, and The Great American Indemnity Company of New York (Koop, I, 393-394).

Mr. Koop was advised when the federal court rendered its decree and order of distribution. In round figures and percentages he understood that the terms of the decree were 20 per cent to the policyholders, 50 per cent to the companies, direct, and 30 per cent to Mr. Street and Mr. Folonie as trustees. Mr. Koop does not know of the terms of the trust. He did not check on the amounts, except in a general way. He knew that the 30 per cent was set out to repay the State, $200,000.00 for its expenses, $500,000.00 to the State for its lawyers, other fees for the companies' lawyers, and the balance of the 30 per cent to go to the companies. He knew that after all legal expenses were paid, if anything of the 30 per cent remained, "The company was to have that, nine companies were to have that" (Koop, I, 415).

(Note: There were nine companies in the Great American group, but only five had cases in the federal court.)

When Mr. Street was talking to Mr. Koop about 5 per cent for legal expenses, Mr. Koop did not know, according to Street's explanation, that there was a fund available for that. To the best of Mr. Koop's knowledge, his companies had received 11 per cent out of the whole impoundment at about the date this 5 per cent was called for. The records were in the West. It did not raise any suspicion in Mr. Koop's mind (Koop, I, 416).

Before the $5,997.00 check was issued, Mr. Street told Mr. Koop that there was a separation in the groups of companies—one group in the federal courts, and one in the state courts (Koop, I, 415).

There were two funds and two sets of companies. One set went to the federal court and their funds were impounded, and another went into the state court for the same kind of lawsuit, and had impoundments. Mr. Street represented to Mr. Koop that he wanted to settle the whole thing as a single private proposition because the defendant in both cases was the Superintendent of Insurance (Koop, I, 418).

Mr. Street proposed to take all of the money for both cases out of one fund and none out of the other because (Mr. Koop takes it) he felt that those funds were available while the others were not (Koop, I, 418). The impounded money in the state cases was tied up. Mr. Koop guesses they could not get hold of it at that time (Koop, I, 417).

Mr. Street said he required that because there were legal expenses and a share of impoundments for the state court companies (Koop, I, 416).

If there was a settlement the funds would be released one place the same as the other. Mr. Koop does not know that Mr. Street offered an explanation as to why he could release one fund by settlement (Koop, I, 418).

In 1936 the federal case had been decided (Koop, I, 415, 418) and Mr. Koop's guess is that the state cases were still in court (Koop, I, 418).

The money was available out of the federal fund because the decree had been entered, but was not available out of the state fund because nobody knew whether a decree would ever be entered, or whether it would be for or against the companies (Koop, I, 421). There was no telling what the decision would be. If the cases had been actually decided in the federal court, there would

not be anything to settle. Mr. Street wanted to clean up and did not want to wait on whether there would be a decree in the state court (Koop, I, 418-419).

Mr. Koop rather inferred that Mr. Street wanted to make payments of something on account to his attorneys (Koop, I, 417).

Mr. Koop thinks that the thing that Mr. Street feared was that after the money was all distributed to the companies in the federal court he might have a little trouble getting it back later on. Mr. Koop assumes that Mr. Street thought it made them feel pretty well to get 11 per cent, and that was a psychological time to get back the 5 per cent (Koop, I, 417-418).

All of the money in the state fund, but none of the federal fund, belonged to the companies that had entered into the state cases (Koop, I, 421).

It was Mr. Koop's impression that this was to pay legal expenses in the state court group and in the group of federal cases (Koop, I, 416-417).

Mr. Street said he was raising the 5 per cent to pay the lawyers in the state cases (Koop, I, 416).

He wanted the companies that had brought suits in the federal court to advance money to effect a settlement in the state cases and take their chances as to whether there would be a settlement. That is what they did. Mr. Koop does not want to say that his companies' funds were to be specifically used to pay for the lawyers in the state court cases. It was for legal fees and there may have been an overhang. He cannot tell whether there was (Koop, I, 421-422). Having in mind what Mr. Street had told him—that this was a common enterprise, one for all and all for one, that did not seem imminently unfair to Mr. Koop. He thinks that one of his companies, the Rochester, was in the state court because its impoundings were small (Koop, I, 416).

Mr. Street stated that he had promised the companies in the state court that they would receive or be accorded the same treatment or consideration as was accorded to the companies in the federal court (Koop, I, 415, 422) and *vice-versa* (Koop, I, 415). He wanted to equalize them and needed money to equalize them, not merely in attorneys' fees, but in some way so that they would come out just like the federal court cases. It was not to appease the state, but to equalize the state court companies (Koop, I, 422).

Mr. Street said that he had not made good on his promise to the state court companies, and that he also had to take care of the legal fees of the state court companies and he wanted the 5 per cent in that connection (Koop, I, 415).

The state court was impounding funds just like the federal court (Koop, I, 417). Mr. Street realized that he could not and had no right to use the funds of the federal court companies for the state cases or for the benefit of the state court companies (Koop, I, 417, 416).

The story that Mr. Street told Mr. Koop led the latter to believe that Mr. Street was asking the companies to voluntarily contribute 5 per cent (Koop, I, 417).

Mr. Koop's recollection is that after the second payment was made Mr. Street said that this was a matter that was being handled by the Actuarial Committee, and that after the cases are entirely closed, when all the settlements were made, the whole thing would be washed up and all calculations made, and a full and complete accounting and a proper allocation of the proceeds would be made to Mr. Koop's and to every other company involved in the Missouri litigation (Koop, I, 417, 420).

Mr. Koop never heard of any such accounting or report to him or to anybody else. He thinks he asked Mr. Street what the status was and that Mr. Street made the reply that Mr. Koop has just outlined. Beyond that, Mr. Koop never asked him (Koop, I, 420).

Mr. Koop saw Mr. Street after 1936 but not frequently. He did not ask Mr. Street for a report as to what he did with this money, or how he used it (Koop, I, 421).

Mr. Koop has since learned through the press that the whole $100,000.00 was used to corrupt Missouri officials and he learned the same thing of the 5 per cent of the remainder. He is inclined to believe it is so. He cannot feel otherwise (Koop, I, 421).

At one time Mr. Street said in connection with the second payment that they had decided to issue checks for 6 per cent and would ask the companies to give a letter of receipt for 11 per cent. Mr. Koop said: "Why, Mr. Street, that isn't right. It is wholly improper to ask a company to give a receipt for 11 per cent when they are only receiving 6 per cent." Mr. Street gave the explanation that Mr. Koop has given here and Mr. Koop said: "If you require that 5 per cent, the proper thing to do is to issue your check for 11 per cent and

ask the companies voluntarily to give you back the 5 per cent that you want." That was done. Mr. Koop, on pure hearsay, thinks that there were a few checks issued at 6 per cent (Koop, I, 419).

The Great American paid $5,997.00 on this item. Mr. Koop did not see any of these records concerning requisitions and checks until 1939 in Kansas City, but concerning the payment, his answer is in the affirmative at this time (Koop, I, 401).

Defendant's Exhibit 83, dated 3-24-36 (I, 402), is a check requisition on Great American Insurance Company for $5,997.00 payable to C. R. Street, agent, stated to be in payment of "(auditor from N. Y. Auth'd by Mr. Koop)." It states it is charged to Missouri Impounded Prems. and is signed "approved by C. R. S."

The $5,997.00 was made on or about March 25, 1936. Mr. Koop guesses it was ascertained that $5,997.00 was the correct figure. He did not ascertain it. It was ascertained by Mr. Street. Mr. Koop's understanding is that there was supposed to be a payment of 5 per cent of their impounded premiums. The Great American had already advanced $10,000.00 and the $5,997.00 plus the payment of $897.43 by the Detroit, according to the memorandum, brought it up to $16,894.43, which he takes it was 5 per cent of the impounded premiums of the Great American Insurance Company, the American Alliance, the Massachusetts, the Detroit and the County, up to May 1, 1935. The figures were all worked out in Mr. Street's office (Koop, I, 405). Mr. Street caused the $5,997.00 check to be drawn right through his office. The president (Mr. Koop) did not even sign a requisition for it (Koop, I, 417). The two payments together aggregated 5 per cent. If anybody had made a contribution to the $100,000.00 fund, he made that much less at the last; so that his total contribution would be 5 per cent (Koop, I, 422). The 5 per cent was fixed, not when the first payment was arranged on the $100,000.00 but on the second (Koop, I, 422).

GROUP TWENTY-ONE.

In 1935 and 1936 Mr. Higley was president of these companies, Mr. Montgomery Clark was vice-president and Mr. Hubbard thinks that at that time Mr. Edward L. Coffill was assistant secretary. He is now secretary (Hubbard, II, 9-10). Mr. Hubbard has no information or knowl-

edge at all concerning this matter so far as the Hanover was connected with it prior to the time he went to the Hanover. He did not talk to any of the executives or learn anything of it (Hubbard, II, 10).

Defendant's Exhibit 122 (II, 12) is a copy of a letter found in the file of Hanover Insurance Company, dated March 23, 1936, addressed to C. R. Street, Trustee, and is as follows:

"Dear Sir:

This will acknowledge receipt of check for $9,056.26, representing 11 per cent of premiums of this company impounded in the State of Missouri.

We are inclosing herewith, our check for $4,116.48, payable to R. J. Folonie, Agent, on account of expense.

Yours very truly,

Vice-president"

Defendant's Exhibit 123 (II, 13) is a letter on the letterhead of the Hanover Fire Insurance Company, dated March 23, 1936, addressed to Mr. V. M. C. Nelson, c/o Hanover Fire Insurance Company, Chicago. It is signed by Edward L. Coffill, assistant secretary, and is as follows:

"We have received a check for $9,056.26, signed by C. R. Street and R. J. Folonie as trustees, being 11 per cent of $82,329.66, account of Missouri impounded premiums.

In return, we have drawn a check for $4,116.48 to the order of R. J. Folonie, Agent, being 5% of $82,329.66, account of Missouri impounded premiums, which is chargeable to legal expense.

We are treating the $9,056.26 as a remittance from your office and the $4,116.48 as a remittance to your office.

Please show these items on your cash statement for March in order that our records may be concurrent."

Defendant's Exhibit 124 (II, 14) is a letter on the stationery of Hanover Fire Insurance Company, Western Department, addressed to Mr. Edward L. Coffill, assistant secretary, Hanover Fire Insurance Company. It is signed, "Charles W. Higley, General Agent, by V. M. C. Nelson,

Accounting Dept." It acknowledges the letter of March 23 and states that they do not know where the trustees got the figure of $82,329.66 for which they sent 11 per cent, but that this, no doubt, will be explained later on. The letter states that the items mentioned in the letter of March 23 would be debited and credited as suggested.

Defendant's Exhibit 125 (II, 15) is a sheet from the Agency Remittances account of the Hanover Fire Insurance Company for March, 1936. It throws no light on the transaction under discussion.

Defendant's Exhibit 126 (II, 15) is the ledger sheet of the Hanover Fire Insurance Company, showing the Agency Remittance for the month of March, 1936. Under date of March 23 appears the entry, "Western Department"; under Agency Credit, $9,056.26; under Cash Paid, $4,116.48.

Defendant's Exhibits Nos. D 127, D 128, D 129, D 130, and D 132 are photostatic copies of pages of the General Cash Book of the Western Department and Defendant's Exhibit No. D 133 is page 23 from the Ledger account of the Western Department entitled "Home Office," and Exhibit No. D 135 is the Western Department report for the month of March, 1936. These Exhibits all show receipt by the New York Office of $9,056.26 and the payment of $4,116.48 as referred to in Exhibit No. D 123 and its transfer to the Western Department of The Hanover Fire Insurance Company.

Defendant's Exhibit No. D 134 is Ledger page, same company, showing a charge to legal expense in March, 1936, of $4,116.48.

Defendant's Exhibit 135 (II, 15) is the monthly statement of the Hanover Fire Insurance Company for the month of March, 1936. Opposite the printed words, "Legal Expense," appear the figures, $4,116.48. Under Remittances from Agents appears the entry, "Missouri Impounded Prems. $9,387.14."

GROUP TWENTY-TWO.

This group of companies is one of the largest in the insurance field. It did a large business in Missouri (Bissell, II, 456).

Mr. Bissell's age is an embarrassing question. He is a good deal older than that of anybody within the sound of his voice (Bissell, II, 455).

Mr. Smith did not attend the Hartford meeting at the time the other money was collected, nor did he attend any meeting anywhere relating to the fire rate litigation (C. P. Smith, III, 36).

Mr. Bissell's recollection is that Missouri is under the direct management of Mr. Griffin, the president of the company (Northwestern Fire and Marine Insurance Company), at Minneapolis (Bissell, II, 442).

Mr. Smith assumes that Mr. Street was located in Chicago. Mr. Dugan, the manager of the Western department was located in Chicago. If Mr. Street had contacted Mr. Dugan, the latter would have had the authority to issue the check. Mr. Dugan was absolutely held responsible for the expenses and losses and was given credit for the profits in the Western department (C. P. Smith, III, 34). Mr. Smith and Mr. Wheeler are now in charge of this company's Western department, but when the 5 per cent was paid Mr. Dugan was the head of that department (C. P. Smith, III, 34). When Mr. Smith talks about the money belonging to the Western department, he does not mean that it belonged to that department separate from the Hartford Fire Insurance Company. It is a bookkeeping matter. As to the accounting part of the business for company accounting, they have what they call "Western department" which is a bookkeeping matter (C. P. Smith, III, 39). Primarily, a Western department, or any other department, is set up in order to have some one man in charge to handle the business in that territory, and it is absolutely his responsibility to see that is is handled right. Whether there is a profit or a loss cannot be determined unless there is a complete record of what he did in his department. That necessarily requires that, in the first instance, that department have a complete set of books on written premiums, losses and expenses, so that you can tell whether he is making a good or bad job of his department. But having once done that, those figures have to be forwarded to go into the annual statement of all the business of the company (C. P. Smith, III, 40).

Mr. Bissell had known Mr. Street for forty or fifty years (Bissell, II, 443) and he knew that Mr. Street was the chairman of the Actuarial Committee conducting this litigation for the Hartford and other companies involved (Bissell, II, 443, 456). Mr. Smith made the check payable to what he supposed was the committee—to C. R. Street, Agent. Mr. Smith supposes that Mr. Street

was the Actuarial Committee (C. P. Smith, III, 33). Mr. Smith did not (when the payment was made) even think of whether the Insurance Executives Association was handling the litigation, or of who was handling it. He did not know who was handling it for the companies. He assumed that Mr. Haid was handling the thing for the whole committee (C. P. Smith, III, 32-33).

Mr. Smith, as assistant general agent, had nothing to do with any disbursements out of the impounded premium funds. That was not handled through him in any way or manner. He had no knowledge whatever concerning it (C. Smith, I, 334).

He never met Mr. Street in his life (C. P. Smith, III, 37). The Western affairs are handled by the Western department, and Mr. Bissell did not follow the thing very closely (Bissell, II, 454).

In March, 1936, Mr. Smith sent a check to Mr. Haid for some $25,000.00 because Mr. Haid telephoned and told him that there was a check to be sent to his company for the return of expenses on the compromise. Mr. Haid told Mr. Smith how much the check was. Mr. Smith cannot recollect exactly—some $50,000.00. He does not remember that Mr. Haid said it was 11 per cent. He remembers that Mr. Haid told the amount and requested another check to be sent, payable to C. R. Street, Agent, for twenty-five odd thousand dollars which was sent. Mr. Smith does not remember much of anything more about the conversation, because he knew Mr. Haid personally. Mr. Smith did not at that time know the percentage of the impounded premiums. Mr. Haid just told Mr. Smith an amount of money that he wanted. Mr. Smith does not remember whether Mr. Haid told him what the money was for. Mr. Smith assumed it was for additional expenses of the committee (C. P. Smith, III, 30-31). Mr. Smith thinks that Mr. Haid told him it was for additional expenses. Mr. Smith honestly does not know whether Mr. Haid said it was for additional expenses or whether he did not (C. P. Smith, III, 36). Mr. Street did not contact Mr. Smith about the money (C. P. Smith, III, 32). Mr. Smith did not send the check to Mr. Street; he sent it to Mr. Haid. He does not think the check left his office before he received the dividend check. He thinks their book entry will show that it was on the same day (C. P. Smith, III, 33). When Mr. Smith made out the $25,000.00 check, he made it

payable to C. R. Street, Agent. When he did that he did not think or believe that he was paying it to any different person or under any different circumstances than when he had paid the original $10,000.00 (C. P. Smith, III, 40). Mr. Smith talked to nobody in the office about issuing this check, except the other man who signed it. He told the other man that they would receive a check for their share of the expenses and that this would go out. The other man was Mr. Fenn, assistant secretary. Mr. Smith told Mr. Fenn what it was for; that it was additional expenses in the case. That was Mr. Smith's assumption (C. P. Smith, III, 35-36). Mr. Fenn signed the check because Mr. Smith asked him to. Mr. Fenn did not know any more about it than Mr. Smith did, nor as much (C. P. Smith, III, 36). Mr. Smith cannot now remember the 11 per cent check at all. He cannot remember whether it was signed by C. R. Street and R. J. Folonie, Trustees (C. P. Smith, III, 33). He did not know that Mr. Street was one of the two trustees handling this 30 per cent fund (C. P. Smith, III, 33).

In a very short time after advancing the money in 1935, Mr. Bissell learned that a compromise had been effected. He does not know how soon he learned it. The compromise was signed in the same month that the advance had been made. Mr. Bissell recalls learning that the compromise was effected, but does not know just how soon he learned it (Bissell, II, 454).

Mr. Bissell does not recall that shortly after the federal decree an official communication came out in the nature of a circular from the Actuarial Committee setting out the terms of the compromise. He went away soon after that. He has since read a number of items in the press that 20 per cent went to the policyholders, 50 per cent outright to the companies and 30 per cent was allocated for the payment of expenses. He does not recall learning it at that time (Bissell, II, 454-455). Mr. Bissell remembers that there was some talk of a decree being entered (Bissell, II, 454).

Mr. Smith does not know that he was familiar with all of those facts—that the case had been settled in 1935, and that the federal court had approved the settlement February 1, 1936, but he knew that the case had been settled, because they had received bonds from the custodian for approximately 50 per cent of the impounded premiums. Mr. Smith presumes that he knew the general

terms of the settlement. He understood that the policyholders were to get 20 per cent. He did not know to whom the 30 per cent would be turned over, but he presumes he knew that it was allocated for the payment of expenses (C. P. Smith, III, 31-32). Mr. Smith knew that this money they were getting was out of the 30 per cent and that they had gotten their 50 per cent. He presumed it was a part of the 30 per cent. He thinks he probably knew that that money had been allocated for the payment of expenses (C. P. Smith, III, 32). The Hartford Company and its subsidiaries got back something over $350,000.00 or $360,000.00 in bonds and cash from the impounded premiums. Then they got about $77,000.00 more on this 11 per cent refund. Out of that Mr. Smith paid back to Mr. Street, under suggestions from Mr. Haid, some $25,000.00 in addition to the $10,000.00 that Mr. Bissell had authorized the previous year (C. P. Smith, III, 39). He did not ask Mr. Haid what he wanted the additional money for because he assumed that there would be an accounting of the whole thing. Witness thinks Mr. Haid said there would be a later accounting. That is customary in cases of this kind. In a case of that kind, in a committee case, it is customary to pay out money just because someone asks you for it without knowing what it is for or trying to find out what it is for (C. P. Smith, III, 32). Mr. Smith did not think it was his duty to ask questions and find out what this was all about, because he supposed there would be an accounting. That is customary. Getting an accounting would be up to the Western department (C. P. Smith, III, 33-34). Mr. Smith paid the money because he understood it was part of this committee transaction and would be ultimately accounted for. He had nothing to do with it except as a mere bookkeeping transaction (C. P. Smith, III, 39-40). Mr. Smith was asked whether he meant to say that he sent out the money simply because Mr. Haid asked him to. He answered, "Well, why not? * * * I had every confidence in Mr. Haid. I supposed it was a regular thing that all the companies were doing. I think probably he told me that" (C. P. Smith, III, 33). Mr. Smith did not know that it was no part of Mr. Haid's business to be handling this fire rate litigation. Mr. Smith does not know, entirely, what the Insurance Executives Association was created for, or what its duties are. He knows nothing about that (C. P. Smith, III, 35). It did not seem strange to Mr. Smith that the

Subscribers Actuarial Committee did not contact him for the money. It did not even occur to him (C. P. Smith, III, 33). It did not occur to him as strange that they did not contact the Western department to get this check, because the previous check that was issued before had come from Hartford, and it represented a whole group of their companies (C. P. Smith, III, 34). It did not occur to him as strange in any way that Mr. Street in Chicago did not contact Mr. Dugan about this matter. He never thought of it (C. P. Smith, III, 34). It did not occur to him as unusual or strange that they would be asking for additional moneys to pay expenses when they had money for that purpose, because they have so many committees and things which call for additional expenses. He did not even think of the 30 per cent part of it (C. P. Smith, III, 32). This whole transaction did not strike witness at all unusual or strange and it still does not. It was a committee matter. They have those. He knew it was a committee matter; that was all (C. P. Smith, III, 35). It did not occur to Mr. Smith that he should have contacted Mr. Dugan and found out whether or not he wanted to pay out this money, because they received more than that money, and Mr. Smith transmitted the difference to Mr. Dugan later. It was a Western department affair in the home office. That absolutely is not the more reason why he should have been diligent in finding out what it was about; because it was up to Mr. Dugan to get their vouchers and their statement on the thing. It was simply a suspense item at the home office. Mr. Smith was paying out the money, but it would eventually be charged to the Western department. He did not consult the Western department. He did not ask what it was for. There was no reason. It was theirs (C. P. Smith, III, 34-35).

Mr. Bissell was not in this part of the country at the time of the 11 per cent dividend and has no recollection of it. It was handled by this company's Eastern secretary who is virtually treasurer of the company, namely, Mr. Clyde P. Smith. Mr. Bissell has no knowledge whatever concerning the 11 per cent distribution and none concerning the check for 5 per cent. He never heard of the latter until quite recently. He went to the Pacific coast either the latter part of February or the first part of March, 1936, and was gone for two or three months. Then in the Fall he was taken critically ill and was away from the office for nearly a year. He is

only at the office part time now, just recuperating slowly from the illness, and there are a good many of these details that he never has known about (Bissell, II, 455). There was no meeting in Hartford where the matter of the 5 per cent assessment was discussed to Mr. Bissell's knowledge. He has no knowledge of any such meeting. He never heard anything about the 5 per cent until within the last two weeks. He was away for a number of months (Bissell, II, 459.

Mr. Smith would not have been in charge of the company in Mr. Bissell's absence. While his title is secretary, he performs the functions of a treasurer. He is not an underwriter. He would be the man in the Hartford's office who would have whatever knowledge the company has concerning any such transaction and all other transactions in connection with this matter during Mr. Bissell's absence (Bissell, II, 459).

Mr. Bissell has not personally supervised the western department for a number of years. Vice president F. C. White has done so. He is now away on his vacation. It is barely possible that he may have known something of this, Mr. Bissell does not think so (Bissell, II, 459).

At the time of the conference in 1935, and at any times since, until it all came out in the newspapers this Spring, Mr. Bissell had no knowledge that Mr. Street was to or would pay any money except to the attorneys or to the State as agreed upon in the settlement. Mr. Bissell had no knowledge that Mr. Street was paying anybody's money to any public official to get this compromise through. Neither Mr. Bissell nor anybody in his company, so far as he knows, authorized or had any intimation that Mr. Street was expecting to use or did use any money of any kind except to pay attorneys' fees and legal expenses. Mr. Bissell was astounded when he read it in the newspapers. Certainly, neither he nor anybody in his company authorized Mr. Street to bribe anybody or to pay any public official to get this compromise agreed to (Bissell, II, 458).

GROUP TWENTY-THREE.

Some of the companies in this group were in the state court. All had impoundings in the Missouri rate cases (Kurth, I, 423). Mr. Kurth does not recall seeing the contract of settlement or the final court order (Kurth, I, 452). Concerning his knowledge of the federal de-

cree and the provision made therein for lawyers' fees, Mr. Kurth said that it was somebody's guess that 30 per cent might cover it, but there was no guaranty that that would be the entire cost, and even now if there are additional costs that are not in the 30 per cent, the companies would be liable for that (Kurth, I, 438-439).

Mr. Kurth was asked whose agent Mr. Street was. He answered that he supposed the request was based upon the fact that it was separate from a personal account. Asked if "agent" means what it naturally implied and whether he intended it to mean that, he answered that there is a distinction between a personal check and one that is not personal. Asked whether he intended that Mr. Street should be his agent in the disbursement of the $28,000.00, he replied "well, he asked for certain sums and we paid it. If he asked us to make it payable to him other than as an individual we would comply with the request" (Kurth, I, 429).

Mr. Kurth is not so clear as to whether Mr. Haid or someone from his office asked for the $28,000.00 check. The request came through "here" or from Mr. Street or through the Subscribers Committee. Mr. Kurth does not recall any letter in the files making the request for the $28,000.00. He thinks it was all done verbally on the telephone, by messenger or otherwise. Asked whether he knew any reason why it should have been done that way instead of by transmittal letters which would show just what it was, Mr. Kurth answered "further than that this was all preliminary to a final settlement and accounting" (Kurth, I, 439). Mr. Kurth does not know of any letter demanding the $28,000.00, or letter from his office transmitting it, or any record other than the bookkeeping record (Kurth, I, 440). The rest of the payment was made to Mr. Street's account on the date of the check in March, 1936. The check was signed by Mr. Kurth (Kurth, I, 427).

Defendant's Exhibit 98 (I, 436) is an order for the $28,682.14 check (Kurth, I, 435). It is an order for cashier's department voucher of the Home Insurance Company, dated March 23, 1936, payee, C. R. Street, Trustee agent. Chargeable to Home, Special A-C No. 3 (Comm'l N B & F). No writing appears after the printed words "In payment of. The order is stamped "Paid, March 23, 1936."

Mr. Kurth was asked if he recalled how it occurred that a line was drawn through the word "trustee" and the word "agent" put after it. He answered "unless the impression first was that it was to be made to him as trustee, and it was later changed to "agent," he did not recall. He does not know why the change was made. He does not, as a matter of fact, know that if it was made to C. R. Street, trustee, it would have to be accounted for with the 30 per cent impoundment. He had no other explanation as to why that large check was made to C. R. Street, as agent, unless it was so requested (Kurth, I, 437).

"Q. When he got the second 5 per cent, that is including the first money, did he say anything to you at that time about what that was to be for, outside of just legal expense.

A. Just a remittance on account, subject to proper accounting."

He never said what it was to be for at all. Meanwhile he was paying witness 11 per cent at the same time he was asking "6."

"Q. He didn't tell you what that was for at all?

A. He just wanted it" (Kurth, I, 444).

This company kept this entire Missouri impounding in a separate bank account and in a separate suspense account. As moneys were paid out they credited it and as money came in they charged the account, "Special Account No. 3" in the bank. That account has been closed out. It would be closed out before the end of the year, then the entries onto the regular books (Kurth, I, 447).

That suspense account was closed up before the end of the year 1937. They had to get it into their regular books in order to properly account to the state departments. This is not the only item of business Mr. Kurth can think of occurring in the last three or four past years that has been on suspense. They would open separate accounts. They have what is known as the "Number 2" account. This was opened as a special account (Kurth, I, 448-449). As to holding the item in suspense, not knowing where to charge it until he got Mr. Street's report, Mr. Kurth said it was closed out before the end of the year with the transactions up to that time because they could not keep a suspense account over the yearly account. When they closed it out they did not get the

information as to what the money was used for. They charged it all for legal, right where Mr. Street said to begin with (Kurth, I, 443). They did not enter in the regular books of the company because, until they had a final settlement of accounting, so that they could properly allocate the funds, it was kept in this suspense account. It was charged up for legal expenses. The suspense that there would be was the final accounting as to the disposition of the funds. By that, Mr. Kurth means the report, the accounting of Mr. Street (Kurth, I, 442-443). What they carried on their books was the difference between the 80 per cent impoundings, and the cash received was charged to legal and when there were debits and credits they were written on the books and the account was closed out by December 31, 1937 (Kurth, I, 448). When the distribution of 45 per cent, which has been referred to as 50 per cent, was made, they deposited it in that special account "Number 3" and then charged $28,000.00 against that account. They credited the 11 per cent to the account and charged the 30 per cent to legal expenses (Kurth, I, 447). The $28,000.00 check was made because, plus the $15,000.00, as Mr. Kurth recalls, it represented 5 per cent of their impoundments. Mr. Kurth understood that his and all other companies were giving 5 per cent to Mr. Street as agent. The detail as to how it was made payable seemed immaterial to them. The two checks (Defendant's Exhibits 95 and 95-A, I, 430; III, 434) came into Mr. Street's hands (Kurth, I, 437-438). Mr. Kurth did not specifically report to his board of directors that he had issued the check for $28,000.00. That is part of the Executive's duties and prerogatives. From time to time they reported on the state of the Missouri rate litigation, but Mr. Kurth did not tell his board of directors that he had issued two checks which would make $43,000.00 for the companies, and he left no memorandum of the $28,000.00 transaction in the files "except what is there" (Kurth, I, 441). Mr. Kurth was asked if there was anything in the files where there was any record of the understanding that these companies were to have any benefit of the credit for the $15,000.00 advanced. He said he had knowledge of the fact. He was asked, if he had died, who would have had the benefit of that knowledge to have kept them from assessing his companies $43,000.00 instead of $28,000.00. He answered that that assumes they were a bunch of crooks; they were dealing with honorable people, as they

supposed, and if they would give a statement that they would account for something, for money they had asked from him, then we certainly would expect it (Kurth, I, 441). Mr. Kurth supposes, looking back now, that if they had had the decree of the court before them and the fact that someone allocated 30 per cent for distribution through Mr. Street and Mr. Folonie, those two facts, if they came up and were considered, the point would be raised as to why it was done that way; but, to Mr. Kurth, it just appeared that here was a remittance on account of Missouri impoundings and a request for a return of part of it (Kurth, I, 438). Mr. Kurth gave these checks to Mr. Street and trusted him to make the distribution and disbursement, and whatever Mr. Street did was certainly all right with Mr. Kurth (Kurth, I, 438). As to whether there was any legal expense except the company's own lawyers, Mr. Kurth did not think of that or consider it at all. If Mr. Street had said that this was a payment on account and would be disposed of through proper accounting methods when the situation was cleared up, that was sufficient "for us" (Kurth, I, 426). That was all Mr. Kurth was interested in (Kurth, I, 429).

Mr. Kurth never demanded any special accounting from Mr. Street or the trustees or the custodian (Kurth, I, 448). Mr. Street never made an accounting that Mr. Kurth recalls. When asked whether he had ever asked for any details or anything further about it, Mr. Kurth said that he was in the hospital nearly a year shortly after this thing came off and was away from the office practically a year. He went to the hospital in July, 1937. He probably saw Mr. Street between the time of the issuance of the $28,000.00 check and the time when he went to the hospital. If he saw Mr. Street, he did not ask him, because this accounting is a matter of routine. On Mr. Street's assurance of the proper accounting of the funds that matter takes its regular course (Kurth, I, 443). No final settlement was made, either by the trustees or by the custodians. As Mr. Kurth understood it, there were substantial amounts of money for the company, before they restored to the custodian the moneys which they got, both in the custodian's hands and the trustees' hands, and there never was any final settlement either by the trustees or by the custodian (Kurth, I, 448).

Mr. Street got this 5 per cent on the theory he was going to get up a full statement by the end of the year, but he didn't. Witness never asked him to.

"Q. Well, your head accountant, when he got ready to close up the account, you had handled it, did he come to you, ask you about it?

A. Yes, we allocated the difference between the cash received and the 80 per cent as legal.

Q. And closed it out that way at your directions?

A. Yes" (Kurth, I, 444).

Meanwhile Mr. Kurth had no further communication with Mr. Street to find out whether that was right or wrong. They closed it out when they did not know because they had to. They could not carry a suspense account over the end of the year. They had to account to the state department.

"Q. I know you do, but that wouldn't keep you from making an inquiry to find out what was the right way to handle it. I understand you told the accountant what to do without finding out what was the right way?

A. That wasn't a final accounting, anyway. There have been changes since" (Kurth, I, 445).

* * * * * * * *

"A. With 40,000 agents and 4,000,000 policies issued each year, with the supervision of twelve companies, you don't sit down and study from a legal aspect what is to be done with every transaction.

Q. No, you don't; you leave it to other people, but this time you saw fit to handle it yourself; that was the difference?

A. Because I was the officer in charge and had attended these meetings with Mr. Street. That was the logical method to pursue" (Kurth, I, 446).

Mr. Kurth's attention was called to the fact that they were getting ready to close out the book transaction, and the accountant did not know a thing about it, and had to rely on Mr. Kurth; that Mr. Kurth told him how to handle it, but Mr. Kurth did not ask Mr. Street whether that was the right way or not, and Mr. Kurth was asked how that happened. He answered that he asked in Chicago if the accountants there would not get up some formula for treating this thing, but did not meet with any success. One of the concerns was that, in view of the penalties for non-reporting of premiums written in Mis-

souri, Mr. Kurth wanted to make sure that those premiums would be reported to Missouri for taxation. The time had come under the rulings and regulations of the various states that he had to do something with that item (Kurth, I, 445).

Mr. Kurth's attention was again called to the fact that the accountant did not handle the transaction, but had to ask him, and that he told the accountant, without finding out what it was or making any inquiry from Mr. Street. He again answered that this was not a final settlement at the end of the year; that it was final to the department as to what it was, subject to further charges.

"Q. Yes, I know, but you were reporting it to the states and he was asking you what to do with it and you told him how, without even asking the man that handled it, is that right?

A. That is the fact, but that sounds pretty narrow" (Kurth, I, 445-446).

The Home companies pay $100,000.00 a day in losses alone. When they pay this in losses, they have the O. K. of the head of the loss department that this amount is payable. Presumably, they all have the proof of loss; so that witness knows that they are really paying for a loss and that would be subject to the annual audit of the auditors. They have files on the loss claims that give the complete story, whether in the home office or in the Western office. As to the matter of the size of the disbursement, the whole Missouri transactions were in the suspense account (Kurth, I, 442).

From July, 1937, for practically a year, Mr. Kurth was away from his office and Mr. Street died while he was away from his office. It occurred to Mr. Kurth that the fact that a man had a fatal malady was a reason why he should urge him to give in his reports. They all knew he had to die, but Mr. Kurth had no special knowledge he was so gravely ill until he died. Mr. Kurth does not recall when he found out that Mr. Street had cancer, or when he found out that he was a sick man (Kurth, I, 451-452).

When the 11 per cent came in "that was all Missouri impoundments case" and if the 5 per cent was to go back, it went back. There was no distinction in Mr. Kurth's mind, as he recalls, where the 11 per cent came from. It was a remittance (Kurth, I, 439). Asked whether it

seemed strange to him that they would not have just sent 6 per cent instead of 11 per cent and 5 per cent back, Mr. Kurth said he never considered that matter. The 11 per cent came from somewhere, whether from the trustees he does not know, and he cannot swear now where it came from. In his mind they got 11 per cent from the Missouri impoundings. He is not clear until now where it came from, but when they asked for 5 per cent back it seemed perfectly all right to witness. The request came from Mr. Street (Kurth, I, 439).

Mr. Kurth never, at any time, suspected that any of these funds would be used to corrupt officers in Missouri. He found out that fact when he went to Kansas City in 1939 (Kurth, I, 450). He never ascertained whether any of his companies' funds were used in corruption. Naturally they had curiosity as to the whole affair as it developed in the newspapers in Kansas City (Kurth, I, 450-451). Mr. Kurth heard the rumor that Mr. Street was in trouble with the federal authorities about his income tax over this insurance settlement long afterward. He did not hear of it during Mr. Street's lifetime (Kurth, I, 452). Mr. Kurth testified before the federal grand jury (Kurth, I, 451). Mr. Kurth largely answered questions for Mr. Milligan, the district attorney. Mr. Kurth was not introduced to Al McCormack while he was in Kansas City, would not know Mr. McCormack if he saw him, and did not talk to him (Kurth, I, 451).

GROUP TWENTY-FOUR.

During the time that Mr. Wilkins was with the Importers and Exporters, he had knowledge or information regarding the Missouri rate litigation. He handled the records of it in the office for that company (Wilkins, II, 100).

Mr. Barry knew Mr. Street was chairman of the committee that was handling the litigation and assumed he had full responsibility and authority to act for the companies (Barry, II, 119).

Asked who handled this litigation for all of the companies, Mr. Wilkins answered: "Street and Folonie, or, pardon me, Hicks and Folonie." Mr. Wilkins said that Hicks and Folonie had been employed by the Subscribers Actuarial Committee. He did not know that Mr. Street was very active in handling this litigation. He did not know Mr. Street, but the Subscribers Actuarial

Committee handled this litigation, as agents for the companies, and employed Hicks and Folonie and other attorneys to represent the company. Mr. Wilkins knew that, understood it, and made no objection to it (Wilkins, II, 100-101). It came to Mr. Wilkins' knowledge that about May, 1935, an agreement had been entered into to settle the litigation. As to the terms, he only knew that the impounded moneys were to be given, 20 per cent to the policyholders, 50 per cent to the companies and 30 per cent to the trustees, Street and Folonie; and he understood that the 30 per cent was paid to the trustees for the purpose of paying all of the expenses, including court costs and attorneys' fees, and the balance, if any remained, was to be distributed among the companies. He does not remember how he got the information (Wilkins, II, 101). This company made no objection to the settlement. They understood that their case was being settled along with all the rest of them (Wilkins, II, 101). Mr. Wilkins became advised that in February, 1936, the federal court in Kansas City approved the settlement and entered its decree (Wilkins, II, 101).

Mr. Barry does not think of any company of which he was an officer, or in which he was interested, either directly or indirectly, in 1935 or 1936, which was connected with the federal court rate litigation in Missouri, and he thinks he would know of it if he had been (Barry, II, 121). Mr. Barry did not know that the case had been settled. He knew nothing about that. He was not then an officer of the Importers and Exporters, and did not know whether that company got a check for 11 per cent (Barry, II, 120). Neither Mr. Barry nor any other officer of Corroon and Reynolds Co. was an officer of Importers and Exporters Insurance Company. They operated the company after "they reinsured their entire portfolio under a sort of a general agency or underwriting manager's basis." Corroon & Reynolds Company reinsured the entire liability of the American Equitable Assurance Company. Importers and Exporters Insurance Company has to actually reinsure in order to comply with the insurance regulations. The American Equitable reinsured all of the risks of Importers and Exporters, and Corroon & Reynolds were managers of the American Equitable Company. Thereby, Corroon & Reynolds had some interest in the disposition of the impoundings for the companies that were reinsured. The Importers and Exporters had a big interest in it, because up until the time they reinsured

the business, whatever was coming from Missouri belonged to the Importers and Exporters. Mr. Barry is not sure, but he thinks they reinsured at the end of 1931. He thinks that the company left the State in 1932, and was not in the State and has not been since. A five year policy would run off in six years. At the end of the five years it would be practically run off (Barry, II, 117-118).

Mr. Erskine, of the Insurance Executives Association came to see Mr. Wilkins and had a check from Street and Folonie for 11 per cent (Wilkins, II, 104, 105). They had already received 50 per cent from the custodian (Wilkins, II, 105). He asked Mr. Wilkins for a check for 5 per cent. Mr. Wilkins asked him what the requested check was for. Mr. Erskine said he did not know, that the request was passed on to him, that he was just asked to get the check. Mr. Wilkins told Mr. Erskine that he could not issue a check without knowing what it was for and Mr. Erskine said, "Well, talk it over with your president, and I will be back." So Mr. Wilkins spoke to Mr. Valensi, and, as the company had reinsured all of its outstanding liabilities as of January 1, 1932, with the American Equitable Insurance Company, Mr. Valensi asked Mr. Wilkins to speak to Mr. Barry about it. Mr. Barry is of Corroon and Reynolds, Inc., who are the managers for the American Equitable Assurance Company (Wilkins, II, 104). About March, 1936, Mr. Wilkins, who was with the Importers and Exporters, called Mr. Barry relative to the payment or issuance of the check to C. R. Street, agent, presumably for certain expenses in connection with the Missouri rate litigation. Mr. Wilkins was the treasurer of the Importers and Exporters. Mr. Barry was not an officer of the company (Barry, II, 118). A request had evidently been made to Mr. Wilkins to draw a check for 5 per cent of the impounded premiums of the Importers and Exporters. Mr. Wilkins asked Mr. Barry whether he should draw this check (Barry, II, 118). Mr. Barry, said, "Well, I will let you know about it" (Wilkins, II, 104). "I will call you back later"; because he was busy at the moment, and he wanted to sit down and figure out what the thing was all about. He did take some period of time to think it all over, but cannot remember all of that detail (Barry, II, 118-119). He made no investigation as to what this money was for, and had no idea what it was for. Mr. Barry did not call anyone and make inquiry about it. He thinks Mr. Haid had called him up and said that

the request had been made of the Importers and Exporters for the check and if Mr. Wilkins had asked Mr. Barry about it, "will you please ask him to send the check along," or words to that effect (Barry, II, 119). Mr. Barry remembers that part. He cannot remember whether that was done before or after Mr. Wilkins took it up with him. He did not ask Mr. Haid what they wanted this money for. He took the request just as he gets lots of requests in the business. That would be a perfectly natural request, because the Importers at that time were practically dormant, doing nothing. It just had a president and secretary with no office organization of any kind. Mr. Barry knew that the Importers and Exporters were paying 5 per cent in connection with matters that had been going on for years, and was paying it to Mr. Street who was the chairman of that committee. Mr. Barry assumed Mr. Street handled the matter and if Mr. Street, an outstanding executive in the insurance business, who had had the full responsibility, called for 5 per cent, Mr. Barry could not be asking him in detail what it was for, on the theory that when the matter was all wound up they would get an accounting from Mr. Street, or Hicks and Folonie, or whoever it was, as to what had happened. Mr. Barry did not know definitely that Mr. Street had been representing them as agent with full responsibility regarding the litigation. He did not know much about it. The American Equitable was in the state court (Barry, II, 119-120).

All of Corroon and Reynolds' companies were in the state court. So far as Mr. Barry knew, their matters were not settled, and he thinks they are not settled yet. The only connection they had with any federal court was by reinsurance. The only reason Mr. Barry was asked whether it was all right to give the check to Mr. Street was that the Importers had moved over into the office, and Mr. Wilkins was a minor officer wanting to know whether it was all right to draw a check for 5 per cent. He probably asked Mr. Barry about any number of other items that Importers and Exporters paid, having no connection with this matter, as to whether it was all right to pay it. So far as Mr. Barry knows, because the Corroon Company never had any other matter beside this particular one, Mr. Haid was not in the practice of supervising the collection of funds in regard to litigation of insurance companies (Barry, II, 120).

Mr. Wilkins thinks that on the following day Mr. Barry called him (Wilkins, II, 104) and said, "Well, I think you better draw the check. It is the request from Mr. Street who has been handling this matter for years and if he wants 5 per cent, give it to him." Mr. Barry did not take a day to investigate before saying that (Barry, II, 118). Mr. Barry does not think there is anything "illogical to say 'go ahead and give it to them' " (Barry, II, 120). Mr. Wilkins drew it as requested and gave it to Mr. Erskine, charging it, as he recalls, to the Missouri impounded rate litigation case. He did not know what it was for, but merely issued the check because Mr. Barry said so. Mr. Barry's company was the ultimate recipient of whatever funds were impounded. They were interested more than his company was. He did whatever the ultimate owner wanted him to do (Wilkins, II, 104).

Mr. Wilkins was one of the officers that signed that check (Wilkins, II, 104). This company's impoundments were $49,000.00, it got back around $30,000.00 and paid about $2,400.00 for these expenses. That is all Mr. Wilkins knows about it (Wilkins, II, 105). Mr. Wilkins knew nothing about what was in the newspapers until recently (Wilkins, II, 105). He never knew Mr. Pendergast, Mr. O'Malley or Mr. McCormack, and never had any communication of any kind with them (Wilkins, II, 105). Mr. Barry knew Mr. McCormack slightly, because he was with Charles L. Crane and Company, Agents, in St. Louis. He knew Mr. O'Malley slightly, having met him at an insurance commissioner's convention. He did not know Mr. Pendergast. Neither he nor any member of his firm had any communication by telephone, telegram, letter, or personal contact, with Messrs. Pendergast, O'Malley, or McCormack, regarding the Missouri litigation or the settlement thereof. They never authorized Mr. Street to pay out any money to settle the litigation (Barry, II, 121).

GROUP TWENTY-FIVE.

Mr. Catlin understands that the Actuarial Committee had charge of this litigation for his and the other companies and had been in constant contact with his Western department (Catlin, II, 276, 271). That has been his understanding all the time. Mr. Catlin knew that Charles R. Street was in fact the man who had active charge of the litigation, and that it was entrusted to him with these companies' knowledge and consent (Catlin, II, 271).

This company has a real Western department with full jurisdiction of all the Midwestern costs. Since March, 1936, Mr. Robertson has been in charge of the Western department. Before that it was Mr. Tuttle. Mr. Catlin's ignorance of a lot of this matter is due to the fact that they have a Western manager who handled all this thing (Catlin, II, 271).

Mr. Catlin did not know that the compromise was effected in 1935. He did not know anything about the status of the case. That was true in 1936 and always (Catlin, II, 272, 277). He never was in touch with it (Catlin, II, 272). He is not familiar with it at all (Catlin, II, 277). Yet, Mr. Haid, whom Mr. Catlin had never heard of having any connections with the case (Catlin, II, 275-276) personally called on him at his office (Catlin, II, 276, 272, 279, 274) on March 24, 1936, and delivered a check to him and received from Mr. Catlin certain checks for various companies that are listed in his letter of March 24, which checks, Mr. Catlin understood, aggregated 5 per cent of the impounded premiums (Catlin, II, 272). Mr. Catlin admits that it is unusual, out of the ordinary, that Mr. Haid would make a personal call and request checks aggregating $13,000.00 and not make some explanation why he came directly to Mr. Catlin (Catlin, II, 276). He does not remember that Mr. Haid told him about the status of the litigation (Catlin, II, 272). He would not have understood it anyway (Catlin, II, 273). Mr. Haid was in Philadelphia; Mr. Catlin assumes that there was some hurry about it, and that Mr. Haid was collecting from all the Philadelphia companies, saving a day; but Mr. Catlin does not remember any particular explanation why Mr. Haid called in person. Mr. Catlin does not think that Mr. Haid came for the purpose of making an explanation of the check and the urgent need for it, and does not recall any explanation except legal expense in the Missouri case (Catlin, II, 275). Mr. Haid had not been in the habit of calling at Mr. Catlin's office for checks, and had never done so before to Mr. Catlin's knowledge. But Mr. Haid has called at Mr. Catlin's office before; mostly, usually, just for a personal call; they are old friends. Mr. Catlin does not recall that Mr. Haid ever called for a business transaction before, but he does not know (Catlin, II, 275). When Mr. Haid came to Mr. Catlin's office he handed Mr. Catlin four checks for the four companies, but Mr. Catlin did not know it aggregated 11 per cent of the

impounded premiums. Mr. Catlin may have been told that, but that was three years ago, and Mr. Catlin has no recollection of being told that (Catlin, II, 272-273). Mr. Haid had no other purpose than to deliver the check of 11 per cent and receive a check for 5 per cent, as Mr. Catlin recalls (Catlin, II, 275). He requested checks aggregating $13,000.00 and did not make any explanation as to why he was coming directly to Mr. Catlin (Catlin, II, 276). It was out of the ordinary, but Mr. Catlin did not purposely refrain from asking Mr. Haid what it was about (Catlin, II, 276).

Mr. Catlin is like a lot of other witnesses. This case is so involved that he had gotten sick of it; and here was a call for some additional expense to wind it up, and he assumed it was perfectly all right and was glad to get rid of it (Catlin, II, 276). Mr. Catlin believes that Mr. Haid was in his office but a very few minutes. It would seem natural that the very fact that it was so involved and he knew nothing about it would impel witness at least to say, "What is it all about?" But it was over three years ago, and it was just a conversation, and of course, he was told it was legal expense or he would not have charged it that way. He dismissed it, never gave it a thought for years (Catlin, II, 276). He does not recall that Mr. Haid told him it was necessary to have this money in connection with the compromise, and does not know whether Mr. Haid told him something about the compromise. He has no recollection of any discussion. He does not know as to whether Mr. Haid told him it was necessary to have this to get rid of the case. If Mr. Catlin said so, he will change it. That is his own impression, but he does not know what was said about getting rid of the case. His statement that he was getting rid of it is just an offhand remark. He does not think that he thought that this closed the matter at the time he gave the check but he does not have any recollection (Catlin, II, 276-277). He does not know whether the other companies were called upon to make a contribution of 5 per cent of the impounded premiums. He does not remember being informed that everybody else was being called in and does not suppose that he knew that. It may sound queer, but it never entered his mind. It never entered his mind whether this was a special fee for his own case or a fee common to all of the companies. He would assume that it was their proportion of some fund. He does not recall knowing that it was 5 per

cent of any certain amount. He does not remember for the moment whether Mr. Haid had a memorandum. These checks are for odd amounts and odd cents and he now understands that each one figured 5 per cent of the impounded premiums but he does not know whether he got that information from Mr. Haid at the time. He put out the money because it was asked for by a man whom they completely trust. He does not know what he asked Mr. Haid. He has no recollection what he asked Mr. Haid or what Mr. Haid told him (Catlin, II, 277-278). Mr. Haid said he would like to have Mr. Catlin hand him these four checks (Defendant's Exhibit 191, II, 283, 191-A, 191-B, 191-C, III, 427, 428, 429). Mr. Catlin does not recall what he himself said, but apparently Mr. Haid told him it was for legal expenses in connection with this case, because that is the way it is charged on the books. He does not recollect Mr. Haid's telling him it was legal expense. He would assume that Mr. Haid must have done so, because that is the way they charged it. Mr. Catlin personally authorized the accounting department to draw these checks and he signed a couple of them himself (Catlin, II, 273). Asked if he issued a requisition for the checks, Mr. Catlin said he supposes that they generally use a requisition in his office, but he does not know a lot of the details in the office. Of course, there must be a system in effect in the office whereby requisitions are generally executed for checks. He does not know whether he issued or caused to be issued a requisition. Apparently there is no such thing in the file (Catlin, II, 273). He does not think they did issue vouchers, because it is unusual for the vice-president to be called for a check to be issued right there and then, and to be handed over to a man who is there in person. He does not know what sort of a requisition he made, but he authorized the drawing of these checks or they would not have been drawn. From then on the bookkeepers handled it, and he paid no attention to it. It was an unusual procedure for him to call for a check personally—rather out of the ordinary (Catlin, II, 274). Mr. Catlin did not know anything about the extent of the attorneys' fees (Catlin, II, 277). This is an eighty or eighty-five million dollar company. Mr. Catlin does not know whether this is the first time he ever caused his company to part with $13,000.00 not knowing what it was for. That may or may not be true (Catlin, II, 287).

At the time these checks were written, Mr. Tuttle, their Western manager, was a man very prominent and considered as an outstanding man, in the insurance world. Mr. Catlin knew this rate lititgation was in his Western department, and that however it came out, it affected his Western department, both as to rates and as to everything else, because it was in Missouri. Up to that time he had never been called upon to give the Missouri rate case the slightest attention, because this company's manager really ran their departments. It occurred to him that somebody was going over Mr. Tuttle's head in the matter in coming to him when they had always come to Mr. Tuttle before (Catlin, II, 278). He does not think he asked Mr. Haid why he had not gone to the Western department. He should have done so, if he had had the time (Catlin, II, 279).

"Q. Didn't it occur to you that maybe you owed it to Mr. Tuttle to ask him about that?

A. Oh, our accountants immediately informed him and transferred these credits and debits to the Western books. * * * It happened at that time it was just the interim period when Mr. Tuttle was retiring and Mr. Robertson was taking his place."

Mr. Catlin has not checked up, but he thinks it was that May. It might look funny that he would go over the head of so able and prominent a man. He would not ordinarily do that, but Mr. Haid was sitting there in person, and through trusting Mr. Haid and knowing him intimately for forty (40) years—(Catlin, II, 278-279). Mr. Catlin attended to it instead of having the Western department attend to it because Mr. Haid was there asking for the checks. The Western department had been in active charge of the case and Mr. Catlin's home office was not familiar with it, and knew nothing about the details. Mr. Catlin certainly had a very strong conception that it was fair, because he was dealing with men he knew (Catlin, II, 275).

Defendant's Exhibit 190 (II, 281) is a disbursement voucher of the Insurance Company of North America dated March 24, 1936, for a check to C. R. Street, Agent, for $8,903.39 for Missouri rate case put under the account, "general fire."

Mr. Catlin ordered this disbursement order and supposes that at that time he marked on the voucher, or told the man, what the check was for, but he does not

recall. It says, "general fire." That is a temporary entry. Mr. Catlin did not know it was entered that way, but the man who actually wrote it got his information from Mr. Catlin. That is the only place he could have gotten it. Of course, Mr. Catlin said something to him about legal expenses, because he transmitted this to the Western books. This must have been a temporary entry. They did not total the money. Mr. Catlin assumes that by the entry "general fire," the writer meant that to be charged in an account that they carry on their books as general fire expense. Mr. Catlin did not authorize it to be charged to general fire. He does not know how it got on there, except it was temporary. They transmitted what they received to Chicago and debited it to Chicago (Catlin, II, 284).

Defendant's Exhibit 192 (II, 285) is a sheet from the cash disbursements account. There appears thereon an entry under date of March 24, 1936, as follows: "C. R. Street, Agt. Missouri rate, cash voucher No. 403, check No. 1218, $1,077.43." The amount is distributed to the column "general accounts fire."

Mr. Catlin supposes that Exhibit 192 is a sheet from his company's records. He never saw it. He doesn't know whether they put temporary entries on it (Catlin, II, 285). When Mr. Catlin says "temporary," he means it goes on the book and off. It is a Western item. It is backed in and backed out of home office (Catlin, II, 285). Mr. Catlin had nothing to do with these items. He does not know if in making a temporary entry, they say "legal fees" if they know it is legal fees. The item of legal fees would not properly be located under the general fire account. For an explanation of the item you will have to call the comptroller. The comptroller just got the information from witness to draw the check and charge it to legal expenses. Mr. Catlin does not know why the comptroller made the entry general fire (Catlin, II, 284-285). Mr. Catlin knows nothing whatever about it. He never saw any of these items before (Catlin, II, 285). He never saw the entry until three years later. He did not see the record at the time when copies were made up. This was forwarded by Mr. Eager. Mr. Catlin may have been out of town. He did not see Mr. Eager. He has hardly glanced at the records since this investigation began. He just glanced at them this morning, more closely than at any other time. He never went through them. He knew he was subpoenaed here to tell his

knowledge concerning this affair. He thought his contact was so simple that he did not go into very much detail. He never had any contact with it whatever.

"Q. What would you say your position with the company is?

A. You might be surprised, but I am vice-president. Apparently I probably should be fired through the ignorance I have shown here this morning" (Catlin, II, 286-287).

GROUP TWENTY-SIX.

The Subscribers Actuarial Committee handled the rate litigation in Missouri for the companies. That committee was headed by Charles R. Street and Mr. Remak absolutely knew that Mr. Charles R. Street was in active charge of the litigation. He knows considerable about Mr. Street's reports (Remak, II, 220).

Mr. Remak was asked how his suit ever happened to get started. He answered that they were undoubtedly requested. They were told that there was a movement to get this order to let them have an increased rate. Then they must have been told—he thinks the department refused to let them put it into effect. He is speaking from recollection. Then the record shows that they went into the federal court and got an injunction. He had nothing to do with the technical side. He is not up on the technical side of rate making or anything of that sort. His companies show up in federal court as one company in 137 different injunction suits. The suit was brought in their name. According to the evidence Mr. Street and Mr. Folonie, as attorney, were looking after that. They undoubtedly authorized the Subscribers Actuarial Committee; which from Chicago was dealing with most of the matters that arose in the territory in the thirteen states. Mr. Remak guesses that during ten years he saw Mr. Street pretty regularly; twice a year at the Western Underwriters' meetings. Even then he never personally discussed it with him, although he got to know Mr. Street rather well. Mr. Street would make a report, generally at those meetings, of what the status of the then pending litigation was. Otherwise, everything was in written communication to them, that so and so had happened. This order has been made and that has been made. It was a group

matter; there is no question about that (Remak, II, 223-224).

Mr. Remak said that counsel's statement seemed right to him; he guesses it originally came from the Missouri Inspection Bureau. The counsel's statement was that this suit was brought in his company's name. They were notified by the Missouri Inspection Bureau that the suit had been brought to test the sixteen and two-thirds rate case, and they just accepted that and ratified it by taking the benefits of it as a suit. Mr. Remak also said that while they did not authorize the suit in advance, they undoubtedly ratified it when they found out it had been brought in their company's name and they accepted it. They never at any time had any direct communication with Mr. Street telling him to look after it, unless as an official of the Subscribers Actuarial group. Mr. Remak cannot say whether they were consulted before the suit was brought, or joined when it was stated that a group of companies was going to bring it (Remak, II, 224-225).

Mr. Remak did not handle the financial transactions of his company relating to the Missouri rate litigation. That litigation was handled for his company by Mr. John J. P. Rodgers, vice-president and treasurer (Remak, II, 220).

The reports of the Subscribers Actuarial Committee were generally made at the semi-annual meetings of the Western Underwriters. Sometimes Mr. Remak attended those meetings and sometimes he did not (Remak, II, 221).

Mr. Remak heard of the compromise effected in May, 1935, indirectly or through the Actuarial Committee communications (Remak, II, 220). He only knew it just as they were probably informed directly by the committee, and he heard that, after the compromise agreement was signed, a federal court decree was entered confirming that agreement (Remak, II, 221). He never heard of a fund of $100,000.00 raised in the spring of 1935 until he read it in the papers after the investigation in Kansas City (Remak, II, 222, 223). He thinks they heard everything through letters from the Subscribers Actuarial Bureau, and that he must have heard about the negotiations prior to the actual signing of the compromise settlement (Remak, II, 220-221).

Without identifying what it was, counsel showed Mr. Rodgers something which counsel called "the original." The document which counsel referred to as "the original" was defendant's Exhibit 105 (I, 477), being the circular of the Subscribers Actuarial Committee, dated February 4, 1936 (II, 238, 241). Mr. Rodgers said he could not say he would identify that any more than he would any other of the bulletins received.

Q. And 30 per cent to C. R. Street and R. J. Folonie, trustees?

A. Yes.

Q. I call your attention to paragraph ten.

A. Well, I haven't any doubt but what I received that, but I wouldn't be able to say definitely that I did, because the only thing that I see in there are these dates about the period covered and 20 per cent and 50 per cent, etc. (Rodgers, II, 238).

Mr. Rodgers was asked if it did not occur to him at the time when he gave Mr. Haid the check that he had received in his office a letter from the Subscribers Actuarial Committee advising that the money coming into the hands of Street and Folonie, trustees, would be employed to discharge any debts by or under the direction of the committee, agreed amounts payable to the Superintendent of Insurance and his counsel, court costs, custodian's fees, attorneys' fees and expenses of counsel for the companies; costs of administering and safeguarding money in the hands of the trustees, contingent allowances, or charges; any remaining balance subject to distribution to the companies will not in the nature of the matter be finally and completely distributable for some time. Mr. Rodgers answered that that was not in his mind at the time (Rodgers, II, 238).

Defendant's Exhibit 184 (II, 236) is a letter to Mr. John J. P. Rodgers, Vice-President of the Insurance Company of the State of Pennsylvania, dated February 24, 1936, from Hicks and Folonie. It purports to be an answer to letters from Mr. Rodgers dated February 18th and 19th, addressed to Subscribers Actuarial Committee and contains the following:

> "You are not to receive 50% of all your impoundings, but 50% of the amount impounded to and including your impounding of July 15 (including all

policies effective prior to May 1, 1935). Provisions of the Decree, summarized, are as follows:

"B-1: You are invested with the title to 50% of all net funds impounded and subject to impounding.

"B-2: An order of disbursement is made 'as a partial payment on account'; which is to be 'an amount equivalent to 50% of the net fund impounded with the Custodian by plaintiff up to July 15, 1935.' This is subject to the proviso that if such distribution 'would result in distributing all or within 5% of the total net fund impounded by the plaintiff, the Custodian is authorized to reduce the percentage or amount of the distribution to the plaintiff to an amount that will leave in the possession of the Custodian, after making provision for refunds for the assured under paragraph A, a sum equivalent to 5% of the total net fund impounded by the plaintiff.' The balance not so distributed after ordering distribution to Street and Folonie, the trustees, 'shall be held and retained by the Custodian subject to the further order of the Court.'

"The payments so to be made to you 'shall be made by the Custodian as far as practicable by the delivery to the party entitled to receive payment, of securities held by the Custodian to be selected by the Custodian which shall be accepted and credited on the amount payable at the market value thereof (including accrued interest) as reflected by the closing quotation on the New York Stock Exchange at the close of business on the last business day preceding the date of the Custodian's making delivery or ordering the shipment thereof.'"

Mr. Rodgers does not have with him copies of the letters of February 18th and 19th mentioned in the letter from Hicks and Folonie. He is sure they are in the file. They were letters of inquiry after they received their bonds and cash. The first amount of cash was not correct, and they had to send some $900.00 more to balance up the 50 per cent, and then, Mr. Rodgers thinks, in connection with that, he made some inquiry as to the bonds, at what value they were to be used. In other words, the bonds and cash originally sent did not begin with 50 per cent of their impounded premiums. Mr. Rodgers did not know whether the difference was in

the value used for the bonds or whether it was a mistake in cash. It afterwards turned out to be a mistake in cash. That was the reason for making the inquiry. Mr. Rodgers said he would be willing to produce those letters (Rodgers, II, 237).

Defendant's Exhibit 250 (III, 23) is as follows:

"February 18, 1936

Subscribers Actuarial Committee,
222 West Adams Street,
Chicago, Illinois.

Gentlemen:

Re: Missouri Rate Case
- Federal Court -

We have received from Custodian Kemper $16,500. par value Federal Farm Mortgage Corporation 3¼% bonds, on account of our money which he has impounded. It, however, is less than the 50% which we expected to get in accordance with your letter of February 4th. Fifty per cent of the premiums for the period June 1, 1930 to April 30, 1935 is $18,766.87.

Before calling this to Mr. Kemper's attention, we thought it better to communicate with you and find out whether we may expect a remittance of the balance rather than raise the question with Mr. Kemper. We would also like to know whether these bonds represent a payment on any other basis than the par value of $16,500. or some other sum like the cost when they were purchased.

Will a statement be prepared showing the sums due each company and the payments made to each which would show how each account has been credited?

What prompts this letter is the question which arises as to the basis of cost for these bonds which should be set up in our books.

Very truly yours,

R.

JJPR/MS Vice President."

Defendant's Exhibit 252 (III, 25) is as follows:

"February 19, 1936

Subscribers Actuarial Committee,
222 West Adams Street,
Chicago, Illinois.

Gentlemen:

Re: Missouri Rate Case - Federal Court

We received today a carbon copy of the letter Custodian Kemper sent to our Bank here in reference to the shipment of $16,500. worth of bonds on which has been typed the following:

'Bonds are to be charged to you at Market value reflected by closing quotation on the New York Stock Exchange at the close of business on the last business day preceding the date of our ordering the shipment. Please advise whether or not the following figures are correct:

Principal	$16,500.00	Premium	$295.00
Price	103	Accrued Interest	217.48

W. T. Kemper, Custodian.'

This will answer our question as to the basis upon which our account will be credited and also the basis of cost for bookkeeping purposes about which we wrote you yesterday.

Very truly yours,

JJPR/MS Vice President."

Mr. Rodgers knew that Street and Folonie were trustees. He had received that letter (Defendant's Exhibit 184, II, 236) just about a month before he issued the check. He cannot say that he knew at the time he got the request from Mr. Haid to pay legal expenses that Street and Folonie had 30 per cent for that purpose. He doubts whether he read the bulletin to the extent of posting himself on the exact status of the case. This litigation was going on for so many years, that after a while they got tired of reading the bulletins and skimmed over them, found out what the sense was, and passed them along to file (Rodgers, II, 237).

Mr. Rodgers got a circular letter in which the details of that settlement were set out, and has been familiar

with the terms of the settlement ever since he received that communication; he knew that 20 per cent went to the policyholders, 50 per cent outright to the companies, but cannot say that he knew at the time what was going to become of the 30 per cent. He had the information before him in the letter, but he does not just recall the technical position of it. He knew there was 30 per cent to be dealt with in some way. He did not skip that part of the communication when he got to it. He just has no recollection. It made no impression on him at that time. He knew there was 30 per cent to be dealt with in some way (Rodgers, II, 225-226). Mr. Rodgers' company as of May 1, 1935, had $37,533.00 impounded premiums; 30 per cent of that amount would be some $11,000.00 or $12,000.00. The 30 per cent was of some concern to them. He assumed at the time that it would be absorbed by the lawyers, but he did not take any notice of its technical position (Rodgers, II, 226). His company received the 11 per cent dividend, but it was out of the 30 per cent (Rodgers, II, 226). Mr. Rodgers got this 11 per cent from Street and Folonie, trustees. He knew that it was a part of the 30 per cent that the trustees held, which they had not received (Rodgers, II, 241). Mr. Rodgers is sure the check for 11 per cent was signed by Messrs. Folonie and Street as trustees. He did not question, at the time, what was meant by signing it "trustees." He cannot say that he gave it any particular thought (Rodgers, II, 242). He took it to be like the rest due out of the 30 per cent, something he never thought he would get (Rodgers, II, 226, 242). He felt all the way along that after they got the 50 percent that the chances were that the rest of the money would be absorbed in legal expenses. He was naturally pleased when they got the 11 per cent, and simply accepted it as something that he had not been looking for (Rodgers, II, 226-227). Mr. Haid delivered that 11 per cent to Mr. Rodgers in Mr. Rodgers' office in Philadelphia. He made a personal call and had no other business with Mr. Rodgers' firm on that occasion. He came there apparently for this specific transaction. He did not tell Mr. Remak or Mr. Rodgers how he happened to make a call in Philadelphia for that purpose, and they did not ask him (Rodgers, II, 226; Remak, II, 222). Mr. Rodgers has been trying to recall the conversation, but has not been successful (Rodgers, II, 226). Mr. Remak remembers that he was sitting in his office in Philadelphia and he walked

out and saw Mr. Haid (whom he constantly saw in the business) turning away (Remak, II, 221, 222). He spoke and said, "How are you, Mr. Haid, etc.," and he was about turning away. Mr. Remak just passed the time of day with him, and after Mr. Haid left Mr. Remak guesses he asked Mr. Rodgers what Mr. Haid was in about, and Mr. Rodgers told him of the transaction of March 24—that he had received a check from the trustees for $4,182.71, which Mr. Remak guesses is the 11 per cent as their total impounded premiums; which had been $41,042.05, and on the same date a check was issued to Mr. Street, Mr. Remak thinks as agent, for $1,876.68. Mr. Remak probably asked Mr. Rodgers what it was, and Mr. Rodgers said he understood that it should be charged for legal expense (Remak, II, 221-222). Mr. Remak stopped to explain that the basis upon which they made the return to the custodian as to their total impounded premiums was $37,533.74. On June 26, 1939, they returned to the custodian $30,026.99 (Remak, II, 222).

At that time Mr. Rodgers paid 5 per cent, because Mr. Haid asked him to have a check drawn to the order of Mr. Street as agent. Mr. Haid said it was a contribution toward the expense of litigation. It was not a definite payment of a particular bill or anything like that. It was like creating a fund out of which the lawyers and other expenses and that kind of thing would be paid, and Mr. Rodgers assumed it was a bookkeeping matter. Mr. Rodgers issued the check to Mr. C. R. Street at Mr. Haid's request. Mr. Haid asked for the check, Mr. Rodgers saw no reason for delay, and he said he would give it to Mr. Haid right then and there; and he ordered the check made. He left the office and went to the cashier and instructed them to draw the check and Mr. Haid waited for it (Rodgers, II, 227).

Mr. Rodgers caused a requisition to be issued. He simply wrote the name of "Charles R. Street, Agent," and the sum on a slip of paper and handed it to the cashier and asked them to draw a check in that amount with instructions to charge it to legal expenses. The slip of paper may have been put in the file. This company does not have a system of regular numbered requisitions and that sort of thing in its office. It is a small concern and they are so closely connected with each other that they are in close touch. When they write an order for a check the cashier will hold on to that and put it into the file where other things are kept (Rodgers, II, 227-228).

Mr. Rodgers, after looking through the file, which he furnished to Mr. Haid, does not see the written order that he signed. His only explanation as to why that written order has disappeared is that it was just a memorandum from which a check could be copied (Rodgers, II, 230). The memorandum is not necessarily kept. There are lots of these cases where memoranda like that are given, and after the transaction, destroyed; but there are occasions where there might be something specific and they would keep it. Mr. Rodgers cannot say, now that he thinks of it, that it is customary to hold on to them because they are not numbered things. There are special cases where they would be kept, and certain other cases where they would just be thrown aside. In this case he feels sure that it was just nothing but a piece of paper with the name and amount of money. There would be no particular reason for keeping it. There was no statement on it as to what it was for. His recollection is that he just simply told the cashier to charge it to legal expenses (Rodgers, II, 230). Counsel called attention to the fact that an entry on the company's books indicates that the voucher number was 16,926, and asked where the voucher was. Mr. Rodgers said it is possible that that slip might have been used as a voucher. They number all of these things, and very often the voucher number is put on the check; it may be that if they have a regular bill or statement of any kind, then that is used as a voucher. They gave it the voucher number 16,926. Mr. Rodgers said that the same number on the check was largely an identifying number. He cannot say where the voucher is. He has not seen it since this litigation started. He has not looked for it. He knew what this controversy was about and that the entries made contemporaneously with the issue of the check would have some bearing on the controversy, but he did not look for the voucher; all he did was furnish these copies (referring to all the exhibits). It never occurred to him to look for the voucher, because the important thing was the entry and the check. He does not know whether he has the entry or not. He has made no search for it. He was called upon to produce all his records therein. He produced the check and the book of account (Rodgers, II, 230-231, 234). He produced everything but a copy of the voucher. He naturally realized that the check and the book entries would be something that they would want, and if they had any letters about it they would want that. It did not occur to him

that a voucher would be involved, because his company does not use the voucher system. It has no uniform method of vouchers like many offices do, where they are numbered and all that kind of thing, and kept account of. They use a voucher number as a matter of index more than anything else. He did not purposely refrain from furnishing a copy of any voucher, and he is still willing to look to see if they have one, and if so, to furnish a copy (Rodgers, II, 234).

Defendant's Exhibit 183 (II, 232) is a page from the cash book of the Insurance Company of the State of Pennsylvania. Under the date of March 21, 1936, appears the entry

"Voucher number
16926 C. R. Street $1,876.68."

This amount is entered under the heading "legal expenses." As to the entry of voucher 16,926 on that same page, there is the same explanatory item for the $1,876.68 under the heading "legal expenses," and it was allocated at that time to "legal expenses." It was not necessary to make any other entry than just to put it in that account (Rodgers, II, 241). There is a column in which they generally outline in every instance the nature of the item. The C. R. Street check has no descriptive entry in that column at all. Every other item on that page does have a descriptive entry. Mr. Rodgers can only explain that by saying that they have no definite information as to the distribution of the money. His recollection is that they would probably get some accounting later. Being paid out on a percentage basis indicated that it was creating a fund out of which payments would be made, and then there probably would be an adjustment later of the account in a general way (Rodgers, II, 232-233). Mr. Rodgers cannot say that Mr. Haid in words told him there would be an accounting. He cannot repeat any word that he might have said, but Mr. Rodgers had it in his mind, and must have gotten it from Mr. Haid, that there would be some accounting. That was a natural assumption, because of the sum being on a percentage basis (Rodgers, II, 234-235). Mr. Rodgers never got an accounting (Rodgers, II, 235). He figured that the exact amount of 5 per cent would probably not be distributed to the penny. It might eventually be too much or might be too little. He did not know that the

amount had been determined or fixed. He thought this would be an account for advancement and that there would be an accounting. He must have gotten his information from Mr. Haid, because that is what he had in his mind all the time. There was no one else to get these impressions from. He did not ask Mr. Haid what the nature of the legal expenses was. He took it for granted they were the ordinary fees and expenses. He took it for granted that there would be various lawyers and various kinds of expenses, and that there would be a distribution, that this money was being collected in this way as a bookkeeping matter (Rodgers, II, 233). He thought the check involved legal expenses other than attorneys' fees. There are always costs of various kinds (Rodgers, II, 235). It was putting in the hands of Mr. Street a fund out of which he would pay these things, rather than doing it directly from custodian money. He did not know that the money was already in the hands of Street and Folonie for that purpose. He does not think he ever knew that. He does not even recall reading it in any bulletin (Rodgers, II, 233-234).

When Mr. Rodgers paid $1,876.60 back to Mr. Street, he paid it back out of the 11 per cent that he had just received, the same day. Theoretically it went into the same bank account; so that the amount paid back to Mr. Street at his request was a part of the 30 per cent to be devoted to legal expenses, costs, etc., of that litigation. The exchange of checks would naturally bring about that condition; so this 5 per cent payment was merely to pay expenses mentioned in this very letter (Defendant's Exhibit 105) of the Subscribers Actuarial Committee and Mr. Rodgers took it to be just a bookkeeping matter (Rodgers, II, 241-242). All that Mr. Rodgers thought he was doing was furnishing the money directly in paying legal expenses, and that, in doing it that way, he was providing a special account out of which Mr. Street could act on it. In other words, it was just a bookkeeping matter. It never occurred to him that the man to whom he was paying the money already had the money, or that he was getting from him the money he was paying to him. It did not impress him that way at all. But, now that he looks back on it, it does (Rodgers, II, 243).

Mr. Rodgers had a letter from Mr. Haid, being a circular dated March 20, 1939, on the letterhead of the Insurance Executives Association which is defendant's Exhibit 185 (Rodgers, II, 238-239). Said Exhibit 185 (II, 239-240) was as follows:

"MISSOURI LITIGATION

In connection with Missouri litigation in March or April 1936, you made a payment to Charles R. Street or R. J. Folonie or Street and Folonie of 5% of the premiums of your companies impounded in Missouri. In connection with an investigation being made by the United States District Attorney, he has asked me to secure the following data:

1. The original and one photostat copy of the cancelled check, or checks, making up the 5% of impounded premiums.

2. The original vouchers, records, correspondence, memoranda and data of whatsoever nature and character relating to or pertaining to these checks and payments.

3. One photostat copy of the 'log' of these checks, *i. e.*, photostat copies of the pages of the cash book entries, the ledger entries, and the journal entries in connection with this transaction.

If, as is probable, you issued one check for your group of companies in the payment of the 5% in 1936, in that event attach to the check a memorandum giving the names of the companies and the amounts of their participation making up the aggregate.

I suggest that while you are making the photostat copy of the cancelled check or checks that you retain an additional photostat copy for your own records, and that you keep a copy for your own records of whatever data you send to us, as enumerated in Item 2.

I cannot impress upon you too strongly the importance of the above mentioned data being placed in my possession, either by personal delivery or by registered mail, at the earliest possible date, but *not later* than Friday of this week. I assure you that it will be properly safeguarded by me until I turn it over to the District Attorney on March 28. I am hopeful that by compliance with my request

you will be spared the inconvenience of making the delivery of these data in person.

Very truly yours,

President"

When Mr. Rodgers received this letter from Mr. Haid he complied with that request. He got from his records everything that was requested in that letter, so far as he could find them. He examined the files along with the man that kept them, and all the details, and they went through particularly trying to find any letters that might bear on the subject. The only thing they found was this one letter (Defendant's Exhibit 184, II, 236). They furnished that to Mr. Haid for the United States District Attorney at Kansas City over four months ago, and never received any requests from the attorney or Mr. Haid or anybody else for additional data. They looked to see if they had any voucher records, correspondence, memoranda, or data of whatever kind or nature relating to or pertaining to this March, 1936, payment. They thought they exhausted every file and everything they had pertaining to the subject and furnished everything they had that was in their files (Rodgers, II, 240-241).

Defendant's Exhibit 248 (III, 21) is as follows:

"Incorporated 1794

THE INSURANCE COMPANY
OF THE
STATE OF PENNSYLVANIA

308-310 Walnut Street
Philadelphia

August 4, 1939.

Mr. Paul L. Haid,
116 John Street,
New York, N. Y.

Dear Mr. Haid:

Re: Missouri Investigation

During my examination yesterday I was asked about the letters I wrote dated February 18th and 19th referred to in letter from Hicks and Folonie dated February 24, 1936. I do not know whether

the questions put to me were intended as a test of my willingness to produce these letters or a request. The same conditions obtains as to the questions asked about the original memorandum from which the check was drawn and referred to as a voucher by the examining counsel.

I have examined our file and find all of these papers and in order that they may be available, if wanted, I am sending photostatic copies of them to you herewith. Will you please inquire whether they are wanted for the record and, if so, deliver them? The enclosures are:

Photostatic copies of two letters addressed to the Subscribers Actuarial Committee and dated February 18th and 19th, 1936.

Photostatic copy of the memorandum made for our cashier from which the check was made and the transaction recorded in the cash book.

This latter item was evidently torn from my calendar pad and you will note shows at the bottom the month and day corresponding to the date of our check.

Thank you for your attention to this.

Very truly yours,

Jno. J. P. Rodgers
Vice President"

JJPR/MS

Defendant's Exhibit 249 (III, 22) is as follows:

"Incorporated 1794

THE INSURANCE COMPANY
OF THE
STATE OF PENNSYLVANIA

308-10 Walnut Street
Philadelphia

August 4, 1939.

Mr. Paul L. Haid,
116 John Street,
New York, N. Y.

Dear Mr. Haid:

Receipt of the photostatic copy of the voucher item reveals additional words which were not on the original.

The photostatic copy was made outside our office. The clerk handling it wrote the words '3-of each -- State Of Penna.'

I thought it was better to let these words stand rather than erase them and have new copies made.

Very truly yours,

Jno. J. P. Rodgers
Vice President."

JJPR/MS

Defendant's Exhibit 251 (III, 20, 24) is as follows:

$1876.68

Ck #93806
Phila Natl
3/24/36

$1876.68
C. R. Street agent
Legal Expense
3 - of each -
State Of Penna.
Tuesday, March 24"

Neither Mr. Remak nor his company nor any officer thereof ever asked Mr. Street to attend to anything for them in connection with this Missouri litigation. Neither Mr. Remak nor any officer of his company, so far as Mr. Remak knows, ever authorized or requested Mr. Street to pay any public official or anybody else to bring about a consent decree settling the Missouri litigation and none of them, so far as Mr. Remak knows, knew that he had paid any money for such purpose. Mr. Remak never had heard of Mr. Pendergast nor Mr. McCormack. He knew Mr. O'Malley in his official business, but never met him (Remak, II, 222-223). Neither Mr. Rodgers nor his company or anyone connected with it, so far as Mr. Rodgers knows, ever asked Mr. Street by telegraph, telephone, letter or personal conversation to do anything for them about this Missouri litigation. Neither Mr. Rodgers nor anybody connected with his company ever authorized Mr. Street or acquiesced in Mr. Street's paying any money to Mr. Pendergast, Mr. O'Malley, Mr. McCormack, or anybody else to get this compromise of February 1, 1936, or the May, 1935, agreement through (Rodgers, II, 242).

GROUP TWENTY-SEVEN.

This group consists of the London Assurance Corporation, an English company, Manhattan Fire and Marine, incorporated in the United States, and Union Fire Insurance Company of Paris, a French Company (Nourse, II, 122).

Mr. Nourse has been familiar with the Missouri fire rate litigation (Nourse, II, 122). He would say the Subscribers Actuarial Committee of Chicago, of which Charles R. Street was Chairman, was in charge of this litigation for his company and, so far as he knows, for the other companies. His companies had turned over their affairs in this litigation to Mr. Street or the committee. Asked what he meant when he said Mr. Street was the committee, Mr. Nourse said he could not give the name of any man that was on the committee except Mr. Street (Nourse, II, 122-123). He knew of the compromise agreement that was effected in May, 1935 (Nourse, II, 122). Mr. Nourse does not recall hearing anything about the compromise settlement made in May, 1935, until they had a letter from the Subscribers Committee in a notification of what had been done, which was in the nature of a printed form letter (Nourse, II, 131). Mr. Nourse recalls that out of this settlement the policyholders were to get 20 per cent, the companies 50 per cent outright, and 30 per cent was placed in the trust for certain purposes. The purpose of the 30 per cent was to cover legal fees and expenses of various kinds. Mr. Nourse did not know that was what the 30 per cent was for, and did not go into it very carefully, but that was his understanding. He guesses that approximately between $9,000,000.00 and $10,000,000.00 in both courts was the extent of the impounded premiums for all the companies. He recalled that the federal court entered a decree February 1, 1936, and understood that the decree was for the purpose of disposing of the case (Nourse, II, 123-124). He knew nothing about a fund of $100,000.00 raised at or about the time the compromise was made (Nourse, II, 123).

Mr. Maasen, the auditor, knew nothing of the compromise of the rate case in Missouri before Mr. Erskine called on him. Mr. Erskine called on him about April 2, 1936, and delivered a check for 11 per cent of the impounded premiums for each of the companies. This was

after they had received the custodian's check for 50 per cent in government bonds, Mr. Nourse thinks (Maasen, II, 343-344; Nourse, II, 124). Mr. Nourse does not recall whether there was a letter of remittance or whether the check came to him personally by messenger (Nourse, II, 124). Mr. Erskine said this was a refund on the 30 per cent. Mr. Maasen thinks they withheld 30 per cent for the legal expenses. Mr. Erskine said, "This is a reimbursement of the 11 per cent of the 30 per cent withheld"; at which time he requested a check for 5 per cent of the impoundings (Maasen, II, 344; Nourse, II, 125). Mr. Erskine made no statement as to the disposition of what was left and said nothing else that Mr. Nourse recalls (Nourse, II, 125). Mr. Maasen brought Mr. Erskine into Mr. Nourse's presence and then they were all three present (Maasen, II, 344; Nourse, II, 124-125). Mr. Nourse does not recall that Mr. Erskine told why he delivered the check in person (Nourse, II, 127). The auditor and Mr. Erskine of the Insurance Executives Association came in this company's office and Mr. Maasen said he had a check and Mr. Erskine said he wanted a check for litigation expenses (Nourse, II, 123, 124, 125, 127). And Mr. Nourse said, "All right, give Mr. Erskine a check." Mr. Nourse presumes Mr. Erskine must have waited for the check. He does not recall any conversation as to Mr. Erskine's waiting for the check (Nourse, II, 127). Mr. Nourse believes that the auditor told him that he, the auditor, gave that check for 5 per cent at the time he received the 11 per cent check (Nourse, II, 124). He would say that was in the spring of 1936. He has no knowledge of what transpired in 1935. He knows nothing about that (Nourse, II, 123). It was there that Mr. Maasen got all of the information that he got from Mr. Erskine. It was not a long conversation that took place. All Mr. Erskine said was that this was 11 per cent of the impoundings and he would like to have a check for 5 per cent of the impoundings. He did not make any statement that Mr. Maasen recalls as to what the 5 per cent was for and Mr. Maasen did not ask him (Maasen, II, 344). Mr. Maasen does not recall that Mr. Nourse asked him. Mr. Nourse approved the payment and instructed Mr. Maasen to take care of it and Mr. Maasen went out to the cashier, had the check drawn and gave Mr. Erskine a check for 5 per cent of the total of their impounded premiums without any information as to what it was to be used for. When Mr. Nourse approved it, that was final so far as

Mr. Maasen was concerned (Maasen, II, 344-345). Mr. Erskine did not tell a thing about the purpose of it and Mr. Maasen wrote the check without having any idea at all as to what it was for and so far as Mr. Maasen knows, Mr. Nourse did not know what it was for. Mr. Nourse had no conversation with Mr. Erskine unless it was while Mr. Maasen had left the room for a few minutes to go to the cashier to have the check drawn but Nourse had already said to write the check and had put the stamp of approval on the drawing of the check before Mr. Maasen left. It did not appear to Mr. Maasen that Mr. Erskine had had any prior conversation from what he saw and heard there but he did not get the idea or impression that the purpose of the check was not mentioned with a view of not discussing it at all (Maasen, II, 344-345). Mr. Nourse recalls that Mr. Erskine said the 5 per cent was for legal expenses. Mr. Nourse understood that some 19 per cent remained or had been disbursed out of the fund for attorneys' fees and that the balance was in the hands of Folonie and Street as trustees (Nourse, II, 125-126).

Mr. Nourse made no inquiry as to why Mr. Erskine wanted the 5 per cent for attorneys' fees when 30 per cent had been allocated for that purpose. He told the auditor "O. K., Mr. Erskine wants a check." Mr. Nourse did not inquire because he knew nothing about the situation; knowing the affairs were handled in Chicago, Mr. Nourse made no inquiry with respect to the details. He always felt that 30 per cent was outrageous and any refund was agreeable even though they had to pay back some part of it (Nourse, II, 126). He did not know that Mr. Street and Mr. Folonie were trustees. They were handling the 30 per cent but he did not know in what capacity. He never did understand they were trustees (Nourse, II, 126). He knew that Mr. Folonie and Mr. Street were handling it and knew the check came from it. He was asked to kick back 5 per cent to Charles R. Street. There was no explanation as to why he should send back 5 per cent to Charles R. Street, when he had just gotten a check for 11 per cent from the fund that was specifically designated for that purpose. He made no inquiry. None came to his mind (Nourse, II, 126).

At that time Mr. Nourse did not know to whom these expenses were to be paid. He did not know any of the attorneys except his company's own (Nourse, II, 127).

Afterward he got no information whatever in regard to where this money had gone. He never attempted to get any (Nourse, II, 129).

Defendant's Exhibit 160 (II, 128) is a check of the London Assurance, payable to Charles R. Street, Agent for $3,493.96.

Mr. Nourse imagines that Mr. Erskine said to designate Charles R. Street as agent because the voucher check was drawn to him as agent. Mr. Nourse authorized the voucher check by verbal instruction. It is not customary for this company to give a requisition for checks. They don't use requisitions for checks in his office. He gave verbal instructions to the auditor to issue the check to Charles R. Street, Agent (Nourse, II, 126-127).

"Q. Agent for whom?

A. Agent for us, for the companies.

Q. For what purpose?

A. For legal expenses.

Q. To disburse this money?

A. Or expenses or whatever—

Q. To disburse the money for legal expenses?

A. That is right" (Nourse, II, 127).

When asked if he reported this item to the home office, Mr. Nourse said that once a month they reported to London and the payment of this money was reported only by accounts. There was no correspondence whatever in regard to this particular item between them (Nourse, II, 129).

Mr. Maasen was shown the check (Exhibit 160) and asked where he got the information that it was for legal expenses appearing on the face thereof. He said he considered it a readjustment or reapportionment of the legal expenses. It did not occur to him to ask. He just assumed it was the readjustment of the 11 per cent that was refunded which was originally intended to bring it down from 30 per cent to 19 per cent and finally decided to make it 24 per cent. That was what was in his mind (Maasen, II, 345-346). He only drew the check because he was told to by Mr. Nourse. As a rule, he follows instructions from his superior office. It was not his function to pass upon the propriety of the thing (Maasen, II, 346). He found out that the check they received was 11 per cent. He took that precaution for his own information and then when the refund was 5 per cent he assumed

it was in connection with the same matter so he recorded it on the books, told the cashier to consider that an adjustment of legal expenses, but he really did not know anything about it. Now that he looks back he cannot think of any reason why he did not ask. It did not occur to him at the time. It was in connection with the 30 per cent impounded premiums that were witheld for legal expenses and the refund was predicated on the same proposition of reducing the 30 per cent to 19 per cent. He assumed that the 5 per cent was in connection with the legal expenses. He just thought he understood it (Maasen, II, 346).

When Mr. Nourse gave the check he expected Mr. Street to use it for his companies for whatever purpose the committee decided or by whomever the committee had been served by way of attorneys. What he meant was, that he never gave any specific directions. They left it to the committee. They received reports from the committee usually at Western Underwriters Association meetings, twice a year. After the meetings were over Mr. Street gave progress reports and that was the extent of Mr. Nourse's knowledge of what was going on in Missouri. He does not recall hearing Mr. Street state that he would explain the matter at White Sulphur and does not recall that he heard any explanation. The last White Sulphur meeting witness attended, he thinks, was in the spring of 1935. Then he heard Mr. Street report at Hershey, Pennsylvania, in October, 1935—just a general statement of progress (Nourse, II, 130). The meeting in Pennsylvania was in the fall, if Mr. Nourse recalls correctly. It was a meeting of the Western Underwriters Association. He has a recollection of it in a general way but no recollection of what was said or what transpired (Nourse, II, 131). Mr. Street was always followed by Mr. Folonie, who gave the legal aspects of the case. Mr. Nourse does not remember whether he attended the meeting at White Sulphur after he made this payment of 5 per cent but thinks at the time of that meeting he went to his annual home office meeting in London (Nourse, II, 130-131).

Mr. Nourse had no idea to whom Mr. Street was distributing this money paid for legal expenses (Nourse, II, 127). He had no further information about this matter whatsoever until it broke in the newspapers. He has since talked with the auditor about it, who brought him another copy similar to that of this check and it came

up at the time District Attorney Milligan in Kansas City wanted the checks and the data. They went into their files and got it out and took out their ledger records (Nourse, II, 129). He did not go to Kansas City in connection with the inquiry (Nourse, II, 129).

Mr. Nourse was asked whether he ever had any conversation or correspondence with Mr. Street telling him to look after their suit in Missouri. He answered, "No" —he would say that was more or less automatic that he handled their interests.

"Q. And you just said nothing about it?

A. We subsided." These companies never gave any authorization of any kind (Nourse, II, 129-130).

Nobody connected with any of this group of companies, so far as Mr. Nourse knows, has any personal acquaintance whatever with T. J. Pendergast, A. L. McCormack, or Emmett O'Malley. No one in these companies had any discussion with them concerning the settlement of this Missouri rate litigation by telephone, telegraph, letter, or personal conversation (Nourse, II, 129).

GROUP TWENTY-EIGHT.

The Safeguard Insurance Company is of New York, and the Orient is of Connecticut (Claussen, I, 317). The Law, Union and Rock, and the London and Lancashire are British companies (Claussen, I, 318).

Mr. Claussen is aware that a compromise was effected, and he thinks he learned that at about the time it occurred. He was familiar in a general way with the terms and provisions of that compromise. He knew that 20 per cent of the impounded premiums was to go to the policyholders, that 50 per cent thereof was to go to the companies as their property, and he understood that 30 per cent was allocated, first for the payment of expenses of litigation and attorneys' fees, and the remainder of the fund, if any, was to go back to the companies (Claussen, I, 318).

At about the time the compromise was made, Mr. Claussen received no information of any kind about a fund of $100,000.00 or $100,500.00 raised by some insurance companies for the payment of attorneys' fees in connection with this litigation. He has never, even to this date, heard of that fact, nor that it was paid through Mr. Street to Hicks and Folonie (Claussen, I, 319).

Mr. Claussen received from the custodian all, or practically all, of the 50 per cent that was to be paid to "policyholders." There was a discrepancy of just a few dollars. After that he received money, and the check was made by the trustees (Claussen, I, 319-320).

The check for 11 per cent was delivered to Mr. Claussen by Mr. Street in person in Chicago, approximately in March, 1936 (Claussen, I, 320). Mr. Street called at Mr. Claussen's office and delivered the check in person, and at that time Mr. Street had a conversation with Mr. Claussen about the matter. Those present were Mr. Street and Mr. Claussen. Mr. Street told Mr. Claussen he had in possession checks which aggregated 11 per cent of the amount of "our" impounded premiums, which he was prepared to turn over to Mr. Claussen if he, in turn, would deliver to Mr. Street checks aggregating 5 per cent of "our" impounded premiums. In brief Mr. Street said that if Mr. Claussen gave him checks for 5 per cent he would give Mr. Claussen checks for 11 per cent (Claussen, I, 320-321).

That struck Mr. Claussen as a strange way to transact business (Claussen, I, 321). Mr. Claussen asked Mr. Street why the transaction should be handled in that manner. If they were to receive 6 per cent net, why did Mr. Street just not hand him a check for the 6 per cent (Claussen, I, 320), instead of making a double transaction? Mr. Street said that the reason they were handling it under the method of two checks was to simplify their bookkeeping and keep their records uniform. Mr. Claussen then asked Mr. Street what this 5 per cent was to be used for and Mr. Street said it was something he could not tell Mr. Claussen just then (Claussen, I, 320, 322). Mr. Claussen told Mr. Street that a check from each of his companies for 5 per cent of their impounded premiums was rather an unusual request, and as manager of the company, he should have some information as to what that money was to be used for; that he had no authority to give out money just because someone wanted it. He should have some explanation to give his head office officials if they asked for it. Mr. Street said he was sorry, but he could not tell Mr. Claussen that just now. Then he reached down in his pocket and pulled out an envelope and said that he had called on all of these managers in New York, and had their checks, and if Mr. Claussen wanted to see them, "Here they are." Mr. Claussen said, "No";

if Mr. Street would tell him that he had those checks, that was all the information he needed, and he would take Mr. Street's word for it (Claussen, I, 320-321).

Then Mr. Claussen said, "well, tell me this; is this money to be used in the settlement of this case, possibly to buy a judge or someone?" and Mr. Street answered: "Mr. Claussen, I can answer that question with a positive no. These funds are to be used for legitimate purposes only." With that, Mr. Claussen called the accountant and asked him to check over Mr. Street's figures for the amount of money he wanted and see if it amounted to approximately 5 per cent of their impounded premiums. The accountant came back with the word that it did, and Mr. Claussen then asked him to have the checks drawn and bring them back to him, which the accountant did. Mr. Claussen handed the checks to Mr. Street who bid him good day. That was all that took place at that transaction (Claussen, I, 321).

Upon being asked what entry his books of account showed regarding the disbursement to Mr. Street, Mr. Claussen said that the same entry was made as to each company, in wording, except as to the difference in amount (Claussen, I, 327-328).

After his conversation with Mr. Street, Mr. Claussen passed on no information to the Hartford office. Mr. Gilbert Kingan was in charge of the office in Hartford at that time, but had absolutely nothing to do with the branch at Chicago (Claussen, I, 327). Mr. Kingan has no control whatever over the Western department unless anything of very serious nature arose there. Then he would be able to step in. For instance, on the death of the manager he would be deputed to investigate and report to London (Kingan, III, 18). Mr. Claussen had no communication with Mr. Kingan whatever about this transaction with Mr. Street (Claussen, I, 328). Any reports were made directly to the head office at London, even for the Orient and Safeguard. The only communication with the London office in regard to the transaction was that the remittance had been made, which communication was by letter (Claussen, I, 327).

Mr. Claussen promised to produce a letter while on the stand (I, 327). Thereafter, the following was put in evidence: Defendant's Exhibit 225 (I, 330) was a letter to an attorney for plaintiffs from Mr. Claussen reciting that he was inclosing three letters called for

while he was upon the witness stand. The letter contains the following explanation:

> "In explanation of the inclosed statement, I will advise that the figures under 'Rec'd from Trustee' represent the amounts of checks we received from Mr. Street less amounts of checks which we paid to Mr. Street, accounted for as follows:
> L & L (1) Rec'd from Mr. Street $8255.62 (2) Paid to Mr. Street $3752.55 (3) Net $4503.07.
> Orient (1) Rec'd from Mr. Street $7713.73 (2) Paid to Mr. Street $3506.24 (3) Net $4207.49.
> Sfgd. (1) Rec'd from Mr. Street $1089.87 (2) Paid to Mr. Street $495.38 (3) Net $594.49.
> LU & R (1) Rec'd. from Mr. Street $2876.79 (2) Paid to Mr. Street $1307.63 (3) Net $1569.16.
>
> "The above amounts, (1) and (2), can be verified with figures shown in the photostats of our cash book pages which, as I understand it, are already part of my testimony.
>
> "You will note, further, that there is a slight discrepancy between the amounts shown in the attached statement and my testimony, in that I stated approximately $11,000.00 in checks had been turned over by me to Mr. Street, whereas the amount actually is $9061.80."

Defendant's Exhibit 225 A (I, 331) is a letter from Mr. Claussen to The General Manager, London; dated Chicago, 10th July, 1936. It is as follows:

> "*Re*: Missouri Impounded Premiums
>
> Enclosed I beg to hand you a summary showing changes in the Missouri Impounded Premium Account since we furnished you figures as of 31st March, 1936. The alterations are due to 'Checks Paid to and Received from Custodian since 31st March, 1936,' 'Checks Received from Custodian since 31st March, 1936,' and 'Return Premiums in June 1936 Account.' The 'Impounded Premiums as of 30th June 1936' are as they will appear in our June Balance Sheets."

Defendant's Exhibit 225 B (I, 332) purports to be a tabulation of the impounded premiums as of December 31, 1936, the amounts paid to the custodian, the checks paid, and securities received from the custodian, checks

received from the trustees and the impounded premiums as of June 30, 1936, for each of the companies in the London and Lancashire group.

Defendant's Exhibit 225 C (I, 333) is a letter dated July 24, 1936, from the London and Lancashire Insurance Company, London, to the manager, Chicago, and is as follows:

> "We are obliged for your letter of the tenth inst. inclosing statement of changes in the impounded premiums since the March quarter."

A reply came to him from the London office just to keep them further advised as to how the case proceeded, but there was no further correspondence in regard to the 5 per cent which Mr. Claussen recalls (Claussen, I, 327).

GROUP TWENTY-NINE.

Mr. Brady first had definite knowledge of the compromise agreement the early part of 1936. They had heard rumors from time to time during the past four years that it was in process of being settled. Mr. Brady cannot say that he learned that a stipulation or agreement for settlement and compromise had been executed in May, 1935. He does not recall that a federal court decree was entered in 1936 "pursuant to that." All that he recalls is, in January or around in February of 1936, sometime around there, whatever the agreement or compromise was, there was to be a fund set up out of which the expenses of both sides in the litigation were to be taken care of; but he does not recall the mechanics of it (Brady, I, 371-372). Up to February, 1936, no person discussed with him the payment of any money for expenses in connection with the litigation except, he believes, that during the past his companies had paid some legal expenses through assessments to the Missouri Inspection Bureau. He does not recall offhand, but it seems to him that sometimes when the assessments were made the Actuarial Committee would say the rate had been increased some over last year, due to the expenses of the Missouri litigation (Brady, I, 372, 376). Mr. Brady knew that the Subscribers Actuarial Committee, situated in Chicago, was in active charge of the litigation (Brady, I, 372).

After the settlement Mr. Brady's company received its proportion of the funds from the custodian, which was 50 per cent of the impounded fund, he thinks, some thirty odd thousand dollars (Brady, I, 372). He thinks that the impounded premiums for all companies at that time was somewhere between seven and nine million dollars. He does not know whether it included that in the state court (Brady, I, 374). After the 50 per cent disbursement, Mr. Brady's company also received 11 per cent return from the 30 per cent fund. At the time they received the 11 per cent distribution, Mr. Erskine was the first person that called upon them for expenses other than these assessments which Mr. Brady had mentioned (Brady, I, 372).

Mr. Erskine came over to see Mr. Brady at their home office, 45 John Street, which is 3 1-2 blocks from Mr. Erskine's office. Mr. Erskine is associated with the Insurance Executive Association whose office "is in this building in which we are having this hearing" (Brady, I, 372-373). Mr. Erskine's sole purpose in calling was to talk with Mr. Brady about contributing to the expense. He had with him the check for 11 per cent and came, Mr. Brady assumes, with the sole purpose of delivering the check and asking them to contribute. Asked if ordinarily Mr. Erskine would have mailed such a check, Mr. Brady said that a check of that kind would not necessarily ordinarily have come through the mail. This litigation was rather unusual. They were not in the habit of having litigation of this kind (Brady, I, 373). The whole case was unusual; an unusual situation existed. From time to time they have plenty of checks delivered to them manually. Mr. Brady assumes it was just more convenient (Brady, I, 373). Mr. Brady thinks that when Mr. Erskine came in he (Brady) was alone. As he recalls, Mr. Erskine said he had this check for 11 per cent to pay for expenses. When they heard what the compromise was, although they were to get 50 per cent out of that, they had to pay the agent's commission and that did not leave the companies 50 per cent. In effect, they might have 25 per cent. They thought the compromise was far from a fair one. As Mr. Brady recalls, the master had already rendered a favorable report to the companies. However, there was the fact that they were to get rid of the nuisance and expense in connection with carrying on the case; so when Mr. Erskine came in and said he had a check for 11 per cent of this 30 per cent fund from which

they thought they were never to get anything, they were naturally a little elated because they thought it had all gone out the window. Then, as Mr. Brady recalls, Mr. Erskine told them that there were some expenses, and Mr. Brady thinks he wrote down "legal expenses." Mr. Brady means it was for legal expenses and it seemed to him just on thinking back, that it was for expenses (Brady, I, 373-374). They never undertook to inquire what the nature of the legal expense was (Brady, I, 375). Mr. Brady did not ask Mr. Erskine what the nature of these legal expenses was, but they had never asked the nature of any of the expenses to which they had contributed (Brady, I, 374). Mr. Erskine did not volunteer to tell him other than it was legal expenses (Brady, I, 375). Mr. Brady was asked why he did not ask Mr. Erskine what the nature of the expenses was. He said that when he looks back, they might of course, have examined them, but in effect the thing is this: they never could understand how there could ever be 30 per cent of a fund that was $9,000,000.00 which would cost $2,700,000.00. So it seemed that 5 per cent, only one-sixth of 30 per cent was, comparatively speaking, a very small amount (Brady, I, 376). Asked if he knew that expenses were being paid out of the 30 per cent, Mr. Brady said that he did not know that they knew that expenses were being paid out of the 30 per cent. They certainly assumed it (Brady, I, 376). The 30 per cent was to cover the expenses of both sides, but it seemed to Mr. Brady that there might have been other expenses that would not come in under the court order. However, at the time they were going to collect 11 per cent and were paying out 5 per cent and they never thought they were going to see any of the 30 per cent at all; so they were very pleased to get the money. Mr. Brady thinks that Mr. Erskine said there might be a further distribution out of this 30 per cent fund at some later date. Mr. Brady did not ask Mr. Erskine when the balance would be paid (Brady, I, 374, 376). Mr. Brady assumed that the 30 per cent was allowed by the court, but did not know, for instance, whether his companies would be reimbursed for the funds that they had theretofore contributed through the Subscribers Actuarial Committee (Brady, I, 374). He assumed that the 30 per cent was to pay the expenses of the litigation as allowed by the court. He does not believe he read the trust declaration or the other papers (Brady, I, 374). It did not occur to Mr. Brady that it was a most

unusual situation that they were being called upon to contribute 5 per cent of this 30 per cent fund for legal expenses (Brady, I, 375). He does not know whether they asked Mr. Erskine why the 5 per cent was not taken out of that 30 per cent fund instead of being assessed directly (Brady, I, 375). He does not know whether he ever asked Mr. Erskine if all companies were being called upon to contribute the 5 per cent, but they assumed that if they were paying theirs, they were just going along (Brady, I, 374-375). As Mr. Brady recalls, Mr. Erskine waited in his office for the check to be prepared. Mr. Brady sat in his office and called up the chief accountant on the floor below and told him they were getting a dividend of 11 per cent from this fund from which they had never expected anything, but there were apparently some additional legal expenses which had to be paid, and they would have to draw a check for 5 per cent; that it might be that at some future date there would be an additional distribution of the 30 per cent. Mr. Brady told the chief accountant there were apparently some legal expenses, and that he did not know the nature of them (Brady, I, 375-376).

Defendant's Exhibit 73 (I, 380) is a small piece of paper upon which is the following:

"C. R. Street Agent

60.259.86

11% Pay 5%

6.628.58 3012.99

Merchants Fire
Assurance Corp'n of N. Y.

Erskine March 25, 1936
Ins. Exce. Assn. Paid"

Defendant's Exhibit 73 (I, 380) is a memorandum made by Mr. Brady. The initial is not his. Mr. Brady called the company's chief accountant on the phone and told him that they were delivering this check to Mr. Erskine of the Insurance Executive Association. As Mr. Brady recalls, a check was delivered; so that accountant wrote the memorandum on it and the rest is Mr. Brady's writing (Brady, I, 375). Mr. Brady caused the check (Defendant's Exhibit 74, I, 381) to be issued. The words

"legal expenses for Missouri"—are the handwriting of the cashier of the Merchants Fire Assurance (Brady, I, 377).

Defendant's Exhibit 75 (I, 382) is a sheet from Merchants Fire Assurance Corporation's general cash book, for March, 1936. It shows an entry made under date of March 25th, in the sum of $3,012.99 to C. R. Street, entered as an item in the "Agency Balances" account and marked "Direct."

Defendant's Exhibit 75 (I, 382) is a "copy" of Mr. Brady's general cash book for the period of March, 1936. Mr. Brady was asked what were the words following the name of C. R. Street, after the entry of March 25th, and he read them as follows:

"Legal expense account Mo. Imp. Prem."

The attorney asked him if the words were not "legal fee" and he answered, "The funny thing, you see, there is a period here." He was then asked if the words were not "legal fee account" and he said he did not know why they should put a period after it. Mr. Brady was asked if he could make out the words with any degree of certainty except the word "legal." He answered that he could make out very definitely "Missouri impounded premiums." Asked if there were other entries on the books in regard to it, he called attention to the entry "Missouri refund expense" in the agency record (Brady, I, 377-378).

Mr. Brady was asked whose agent Mr. Street was when he had this check written to C. R. Street, agent. He stated they had thought it was just going to be a name for a bank account (Brady, I, 382).

"Q. Now, did Mr. Erskine state to you any reason for making the check to C. R. Street, agent?

A. Only that as far as we knew that Mr. Street has been mixed—I mean had been handling not only this case, but as I recall the old Missouri refund case; that he was the one who seemed to be the head of the Subscribers Committee of the Actuarial Committee" (Brady, I, 377).

Mr. Brady has since learned through the press that some $450,000.00 delivered to Mr. Street was used for corrupt purposes. He was asked if he had made any effort to determine whether any of the money given to Mr. Street went for that purpose, and he said that all he recalls is a photostatic copy of their check in connection

therewith "was presented of our own accord through our attorneys"; that they had not asked Mr. Street, because he was dead, and they have not asked anyone else nor made any investigation of any kind, because there are some 137 companies involved in this thing and it has all been in the press. They assumed that the attorneys for the companies have been taking care of it. He has not made any inquiry of his attorneys regarding the matter (Brady, I, 378). Mr. Brady thought the money was going to attorneys. He used to pick up the paper every now and then, and he would see another set of attorneys suing somebody for part of the fees that were to be allowed by the court or otherwise, and he assumed that they might have had attorneys doing outside work that the court would not allow. When you say "our expenses," when you say as "our attorneys," they naturally assumed it was legitimate expense. They certainly never thought that anybody would be crazy enough "to use it for anybody for that purpose." Mr. Brady handed it to Mr. Erskine for that purpose (Brady, I, 382). Certainly neither Mr. Brady nor any officer of his company authorized Mr. Street to commit any fraud nor to pay any money to anybody other than the lawyers (Brady, I, 382).

GROUP THIRTY.

This company was a plaintiff in one of the suits involving rates in Missouri. Those suits were pending from 1930 to the present date (Gardner, III, 298). Mr. Gardner knew of the settlement of May, 1935, shortly after it happened. He cannot remember positively, but he thinks he received a letter from the Subscribers Actuarial Committee in June, 1935, regarding the settlement. He remembers definitely that from one source or the other, he understood what the terms were. He cannot positively remember, but he thinks he received a letter from the Missouri Inspection Bureau in February, 1936, which again set out the terms of the settlement as incorporated in substance in the federal court decree (Gardner, III, 298). In 1935 and for sometime previous to that, Mr. Gardner knew that the Subscribers Actuarial Committee had been in charge of the federal court rate litigation (Gardner, III, 298). At one time this company wrote a letter urging Mr. Street and the Subscribers Actuarial Committee to compromise. If not, they threatened to withdraw from the suit. That was the only objection

Mr. Gardner remembers making to Mr. Street and the Committee's handling of this litigation. The company did not withdraw, but permitted them to go ahead and handle matters for this company (Gardner, III, 298).

Mr. Gardner attended a meeting in New York in May this year, the purpose of which was to decide what to do from now on; formulating plans for the future of this case, for the handling of the litigation. Mr. Gardner would say there were about fifty men at the meeting, composed of executives from companies that were parties to the litigation. There was not much discussion concerning the settlement and the affairs leading up to it. It was more an explanation by different people as to just where the thing stood at that time. Mr. Gardner thinks that nobody purported to tell anything in the way of facts. It was more or less an informal discussion about the whole question. The only ones Mr. Gardner talked to purported not to have known what was going on at the time the settlement was made. Mr. Gardner did not, at any time, talk to agents or people like that who were interested in Missouri. He never attended any meeting in which Mr. Street purported to tell the progress of the litigation (Gardner, III, 314-315).

Mr. Gardner authorized the check (Defendant's Exhibit 308, III, 300) to be written. Exhibit 309 (III, 301) is the office copy of the check (Exhibit 308). One afternoon a special agent of the Great American Insurance Company called at the office. He brought over a letter directed to Mr. Jessup and the letter inclosed a check for thirteen hundred and some odd dollars and requested a check for 5 per cent back. Mr. Gardner told the special agent that he did not feel like issuing a check with no more explanation than that; so the special agent took the letter and Mr. Gardner's statement back to Mr. Jessup who was state agent of the Great American Insurance Company in Colorado (Gardner, III, 298-299). Mr. Gardner has known Mr. Jessup for many years. He is somewhere around eighty years old. Mr. Gardner does not think he is retired officially. He does not work much, but Mr. Gardner thinks he still retains his title (Gardner, III, 313).

Defendant's Exhibit 311 (III, 303) is a letter dated April 4, 1936, bearing the initials of Charles R. Street. It is as follows:

"Mr. Jessup:

Here is a note addressed to Mr. Gardner. Hope he will go along. It is all right but cannot give all the details by letter."

Defendant's Exhibit 310 (III, 302) is a letter dated April 1, 1936, from the vice-president to C. R. Street. It is as follows:

"I have read your letter of March 30 addressed to Mr. A. L. Jessup, State Agent, Denver, Colorado.

I wish you could give Mr. Jessup or myself a further explanation of the expenses referred to in your letter. With the present information, my understanding of the situation is very vague, in view of the fact that my understanding is that the legal expenses were taken care of from the impounded premiums by court order."

On the bottom of the letter in handwriting appears the following:

"Street's letter enclosed check for $1,325.00, 11% impounded premiums - - ask for 5%, $699.00 in return."

Mr. Gardner wrote this memorandum on the letter (Gardner, III, 315).

Defendant's Exhibit 317 (III, 308-309) is a letter dated April 2, 1936, from Mr. Jessup, State Agent, to Mr. C. R. Street. It is as follows:

"Mr. Maltby presented your letter of March 30th and check for $1335.21 to the Merchants Fire Insurance Co. but Jack Gardner, the President, is in California and expects to go on to Honolulu and may not return until the latter part of May; the young Mr. Gardner was not conversant enough with the situation to carry out your instructions, as you will note by the enclosed letter, which we hand you herewith.

I am sorry the President, J. R. Gardner, is not here so as to complete the transaction and I will await further advice from you, holding your letter and check in my files until such time as I hear from you."

This special agent brought a letter and then took it back and when Mr. Gardner decided not to give him a check Mr. Gardner simply made this notation as to the contents of the letter (Gardner, III, 315-316).

Sometime later they received a letter of explanation (Defendant's Exhibit 310, III, 302) from Mr. Street with the further request that they make their check for this 5 per cent and on that explanation they did so (Gardner, III, 299).

Defendant's Exhibit 312 (III, 304) is a letter dated April 4, 1936, signed with the initials of Charles R. Street and addressed to Mr. Gardner, marked "confidential." It is as follows:

> "The check you received is out of the expense fund, that fund having been drawn on for 11% by checks payable to the order of the company - that is, 11% of the amount of the impounded premiums.
>
> For expenses we ask 5%, leaving you 6% net.
>
> This will increase the amount you will receive on final distribution.
>
> All companies, including some no longer active in business, have paid excepting two, yours and the Western of Fort Scott, which company has as yet offered no objections.
>
> Due accounting will be made to the Court for the fund placed in the hands of Trustees, and similar accounting will be made the companies for this special fund.
>
> Up to date there has been paid out of the Trustees' account the following items:
>
> Payment to state provided for by the settlement.
>
> Payment to the Insurance Department as provided for by the settlement.
>
> Court Reporters' bill.
>
> Earned premium on Court bonds.
>
> One payment on back account to Attorney Folonie.
>
> Nothing else has been withdrawn from the fund except this 11% distributed to the companies.
>
> If I could talk with you for three minutes, you would, I am sure, thoroughly understand the situation and co-operate with us."

Defendant's Exhibit 313 (III, 305) is a letter dated April 6, 1936, from Mr. Jessup, state agent, of the Great American Insurance Company, to Mr. Gardner, Vice-President of the Merchants Fire Insurance Company. It is as follows:

> "I am enclosing you confidential letter received from Mr. Street and I think with this explanation you are fully justified in sending me over your check to his order for $669.40 which appears to be your share of the expenses as stated in his letter, and upon receipt of it, I will send you his check for $1,335.21."

The following appears in handwriting on the bottom of the letter:

> "Guy: -
>
> $1,335.21 is 11% of our impoundings at May 1, 1935.
>
> From appearances the committee claimed 11% impounded premiums as expense and were allowed this percent, however, it is apparent only 5% expense is needed and the remaining 6% comes back to the companies. The method of handling appears to be for the purpose of the committee to show payment of 11% to the companies - how the 5% returned is to be recorded I haven't any idea.
>
> Reed"

As to the longhand memorandum on Exhibit 313 signed by Reed (Chief Accountant), the accountant read the confidential letter of Mr. Street and that was his idea of what it was about, his interpretation of the letter (Gardner, III, 316).

Defendant's Exhibit 314 (III, 306) is a letter dated April 8, 1936, from the vice-president to Mr. Jessup, state agent of the Great American Insurance Company. It is as follows:

> "I have your letter of April 6 enclosing confidential letter from Mr. Street. This information is very satisfactory, and I think I now understand the situation.
>
> In accordance with your letter I am enclosing check for $669.40."

The memorandum in longhand "legal expense - V 7704" on Exhibit 314, was written by the chief accountant (Gardner, III, 316).

Mr. Street was the superior officer of Mr. Jessup in the Great American and Mr. Jessup was the state agent of that company in Colorado (Gardner, III, 316).

Defendant's Exhibit 315 (III, 307) is a letter dated April 9, 1936, from A. L. Jessup to G. N. Gardner. It is as follows:

> "We are in receipt of your letter of the 8th enclosing check in the amount of $669.40 and are forwarding you herewith check to your order for $1,335.21."

Defendant's Exhibit 316 (III, 308) is a letter dated March 30, 1936, from C. R. Street to A. L. Jessup, state agent. It is as follows:

> "Please see Mr. Gardner of the Merchants and hand him this check for $1335.21. Tell him it represents 11% of his impounded premiums in Missouri as of May 1st last and that he, as has been done by all the companies excepting in the case of a few small items like this which have not yet been presented, is to give you an expense check to the order of C. R. Street, Agent, for 5% of the amount of such impoundments, which in his case would be $669.40.
>
> Tell him full statement will be rendered when this thing is out of the way.
>
> I received expense checks to the order of C. R. Street, Agent, from the Home, Hartford, National and other companies heavily interested - it was all agreed on at a meeting in New York.
>
> You can show him this letter and then destroy it."

When Mr. Jessup brought over the letter (Exhibit 316) Mr. Gardner was not quite satisfied with the information; so he advised his special agent of that and, of course, the special agent in turn told Mr. Jessup. Mr. Gardner later received an additional letter, Exhibit 312. Following the receipt of that letter he paid the 5 per cent assessment to Mr. Street and wrote the letter to Mr. Jessup stating in substance that he was fully satisfied and ready to pay the money (Gardner, III, 310).

In his letter (Defendant's Exhibit 314, III, 306) Mr. Gardner said he was fully satisfied. As a matter of fact, he does not know that he could say absolutely he was fully satisfied, but he could not see any purpose in carrying the thing any further. He thought the information sufficient to warrant sending the check, and that in politeness he might just as well say he was satisfied, because he determined he was sufficiently satisfied anyway. He thinks the statements which might have led him to make up his mind were that it was for expenses and that all other companies had done it with the exception of Western of Fort Scott and this company, and that a due accounting would be made to the court. He did not see much else he could ask. Of course he knew in a general way that the trustees had money with which to pay expenses (Gardner, III, 310-311).

Defendant's Exhibit 318 (III, 309) is a letter dated August 26, 1939, from A. L. Jessup, state agent, to Morrison, Nugent, Berger, Byers & Johns. It states that Mr. Jessup will be eighty-one years old on the ninth of September, his general health is not very good, and his eyesight is getting rather bad; so if the Superintendent of Insurance would be kind enough to send the questions to him or send someone to take testimony, he would be glad to assist all he can. His recollection of the transaction is that Mr. Street sent him a check payable to the order of the Merchants Fire Insurance Company for about $1,335.00, and requested him to get their check for $669.00 which he did, and sent it to Mr. Street, and this is all he knows about it.

Defendant's Exhibit 319 (III, 317) is a letter dated September 1, 1939, from A. L. Jessup, state agent, to Morrison, Nugent, Berger, Byers & Johns. It recites that he has gone through his files and found correspondence with reference to the Street matter which he is enclosing. The enclosures mentioned in the letter are exhibits in this case (Gardner, III, 316).

When this request for 5 per cent was made, it did not strike Mr. Gardner as very strange that the trustees would be collecting an amount of money in this way. He did not understand it fully; but there was a whole lot of questions in connection with this case that he did not understand very fully, because he had not gone into them thoroughly. Turning down the first request was due, not to lack of confidence in the justification for the request, but simply because he wanted something

in his own company's records stating to some degree what it was for, so that anyone who wanted to look at it, the insurance examiner, directors, auditors, or anybody, there would be something in the files. It was not in his mind that there was anything wrong with the payment. He was not in the least suspicious. It did not particularly arouse his suspicion that the letter (Exhibit 316) said, "You can show him this letter and then destroy it." Of course, he did not know at the time why the matter should have been taken up with Mr. Jessup. He had no way of knowing what might have been Mr. Street's purpose in that. But he was not particularly suspicious about it because Mr. Street was with the Great American and, of course, Mr. Jessup would be a close friend and business associate. Mr. Gardner did not question that particularly. Mr. Jessup was state agent for Mr. Street's company in Colorado, and Mr. Gardner did not know Mr. Street personally; so it did not strike him as particularly strange that Mr. Street should do it in that manner. It certainly did not make him suspicious that Mr. Street directed Mr. Jessup to destroy the letter. He might not have been able to explain it, but it did not excite any suspicions in his mind (Gardner, III, 312). The whole thing did not arouse Mr. Gardner's suspicions that anything was wrong. He could not explain why it was done in that manner, but due to his confidence in the whole insurance business and in that particular committee and in Mr. Street, he probably would have accepted almost any explanation under that feeling of confidence. He paid the money because he felt it was the proper thing to do. He had not personally known of any other instances in which expenses concerning the litigation were collected in any other channel, other than the Missouri Inspection Bureau, but he did not follow the thing up over a period of years. The bookkeeper handled most of those things without bringing it to his attention; so there might have been other assessments that he did not know about (Gardner, III, 313). Mr. Gardner thinks that theretofore expenses had been taken care of by assessments of the Missouri Inspection Bureau, although that was a bookkeeping matter and he did not always follow up (Gardner, III, 311). Mr. Gardner would not say there was anything in Mr. Street's confidential letter (Defendant's Exhibit 312, III, 304) that enlightened him fully as to why the trustees did not go ahead and

pay the expenses (Gardner, III, 311) and he had no explanation why the trustees under the settlement decree did not do so with the money they had on hand. But disregarding that, he went ahead and paid the money (Gardner, III, 313). Asked if he went ahead and paid the money simply because the rest of the companies did, Mr. Gardner said it would naturally have an influence that the rest of the companies did it, because his company was very small in comparison with the big companies, and Mr. Street's statement that they had all done it with the exception of his and one other small company would, he thinks, have a tendency to persuade him that it was proper (Gardner, III, 313).

GROUP THIRTY-ONE.

These companies operate under common management, and when there is an expense to be met that is common to them all, the advance is initially made by the National. Then the accountants prorate it according to the interest each one has, usually on the basis of written premiums in the territory that incurred the expense. The allied companies never made any protest on paying the 5 per cent because it is all the same thing. The stock of those companies is all owned by the parent company. The home office is the same, the management is the same (Bell, I, 164-165).

This group is one of the larger groups. Mr. Layton thinks it is pretty close to being in the first ten. Its impounded fund was some $370,000.00. Mr. Layton has not a clear idea of the details, because it was handled in the Western department. He has not the slightest doubt of the accuracy of any figures given by Mr. Bell (Layton, III, 83-84). The Actuarial Committee was handling the litigation for Mr. Bell's companies (Bell, I, 137). Mr. Bell never, to his knowledge, talked to any executive of any company other than his own concerning the suits that were brought for the companies about this 16 2-3 per cent rate controversy, except in the Subscribers Committee (Bell, I, 163). His company got 50 per cent of its impoundments back, sent to them by the insurance department or the custodian he supposes, shortly after February 1, 1936, and afterwards got a check from the trustees in the sum of 11 per cent. The request for a 5 per cent check was made the same date that he got the 11 per cent from the trustees (Bell, I, 155).

Mr. Bell gave a check under date of March 27th, 1936, to C. R. Street as agent for $13,655.11 (Bell, I, 146). The two checks (1935 check, Defendant's Exhibit 33 and 1936 check, Defendant's Exhibit 34, I, 148-149) were the pay-in of 5 per cent for these allied companies. Mr. Bell reported to the home office and they did the allocation of premiums and expenses of every character (Bell, I, 164).

Defendant's Exhibit 34 (I, 149) includes the 1936 check, but also includes a piece of paper upon which appears the following in typewriting:

National Fire Insurance Company of Hartford	$10,073.06
Colonial Fire Underwriters	322.56
Total National Fire Insurance Company of Hartford (Incl. Colonial Fire Underwriters)	$10,395.62
Mechanics and Traders Insurance Company (Connecticut)	1,644.88
Franklin National Insurance Company of New York	948.37
Transcontinental Insurance Company (New York)	666.24
	$13,655.11

That check was delivered to Mr. Street, C. R. Street, Trustee (Bell, I, 154). The only explanation Mr. Bell has for the fact that the word "trustee" was obliterated and the word "agent" written after Mr. Street's name on the check (Defendant's Exhibit 34) is that Mr. Street explained that he was only one of two trustees; therefore, he asked Mr. Bell to change that to "Agent." The check was sent back and Mr. Bell personally crossed out the word "Trustee" and wrote in "Agent" and initialed it, which he did at Mr. Street's request. He did not put in the name of the other trustee or write a new check because Mr. Street said he would like to have the check payable to him. Since he had the authority to pay all the expenses, etc., to settle this litigation, Mr. Bell made it that way. He did not make the check to Hicks and Folonie, because he was requested not to. He was requested to make the second check to Mr. Street. He knew that Street and Folonie were the trustees, but did not make

it to them because Mr. Street asked that he make it to him. Mr. Street objected to "Trustee" because he was only one trustee. Mr. Bell might have included the other trustee and satisfied him, but he never thought about doing it. Mr. Street asked him to change the check and put that word "Agent" on there (Bell, I, 154-155). Mr. Bell said, "Presumably he was the agent of all of the insurance companies involved in this litigation." By the word "Agent" he meant he was "Agent of our company and all companies involved" (Bell, I, 155). Asked why the check was written for $13,655.11, Mr. Bell said they were advised that assessment of 5 per cent for expenses, attorneys' fees, was $18,655.11, and he told their comptroller to make out a check for that amount less $5,000.00 which they had advanced or paid to Hicks and Folonie. Therefore, the check was for $13,655.11 (Bell, I, 152-153). His books show that this $13,000.00 advance was for legal expenses in the Missouri litigation (Bell, I, 162). The notice of the 5 per cent assessment was from Mr. Street. Mr. Bell was told by Mr. Street that this 5 per cent assessment went out to all companies interested or involved in this Missouri litigation in the federal cases which Mr. Bell presumes was so. He did not think about the fact that this would raise something like $450,000.00 if all companies paid. It was 5 per cent of their impounded premiums. Asked how he was notified of the 5 per cent assessment, Mr. Bell said Mr. Street telephoned him. There is no letter in their file from Mr. Street or anybody else calling for this 5 per cent assessment. There was very little correspondence at any time between Mr. Street and Mr. Bell about this or any other matter. Mr. Street gave no explanation whatsoever of the need for the 5 per cent assessment of all companies involved of 5 per cent of their impounded premiums (Bell, I, 153). Mr. Bell would not know what attorneys were to be paid and does not remember all the names of the attorneys that were interested (Bell, I, 141). When Mr. Street and Mr. Folonie turned over 11 per cent, and Mr. Street immediately demanded one-half of that remittance, it did not occur to Mr. Bell that Mr. Street was trying to go around Mr. Folonie, because they knew that Mr. Street had been given the authority so to negotiate this settlement and to pay such expenses, etc., incidental to a compromise. He knew under the trust agreement that both Mr. Folonie and Mr. Street were the trustees. It did not occur to him that Mr. Street was trying to do something with-

out Mr. Folonie's consent or co-operation. Knowing Mr. Street as he did, having dealt with him for so many years, he never questioned him, and he does not remember talking to Mr. Folonie about it at all (Bell, I, 158-159). It was the disposition of Mr. Street which caused Mr. Bell to obey the order and send him these remittances. He would not say he was afraid not to, but he did it because Mr. Street asked it. Mr. Bell knew that if he opposed Mr. Street or questioned his act, he would look upon it as a personal affront. Mr. Street had told him before, when he got the $5,000.00 that he would have to make the assessment for expenses. Therefore, when the assessment came in, Mr. Bell paid it without question. Very likely if anyone else had made this request for the 5 per cent except Mr. Street, Mr. Bell would have questioned it and asked something about it (Bell, I, 159). The fact that Mr. Bell got a request to pay 5 per cent of his entire impoundments back at the time he got 11 per cent of them aroused no suspicion in the world in his mind. He never even thought of whether the 5 per cent should have been deducted from the 11 per cent and then the net sent to him. He never asked Mr. Street a question about it. "If you knew Mr. Street like I did, you never would have asked him that kind of a question" (Bell, I, 157). He never even thought about its looking strange that there was a 30 per cent fund to pay expense, and yet Mr. Street was calling for 5 per cent and he had just had 11 per cent already handed to him (Bell, I, 160). He did not understand that the purpose of the 30 per cent was to pay expenses for Missouri litigation. 30 per cent was in the hands of the trustees to pay expenses and to make further remittances to the companies from time to time. He did not know and he never asked, presumably, what expenses that 30 per cent included. Presumably the expenses which the trustees would pay were limited to federal cases or state cases or other cases; he does not know (Bell, I, 154). Mr. Bell knew that the court impoundment in all cases was around $9,000,000.00 or something of the sort. As a member of the committee he was very familiar at the time with what the impoundment was. The 30 per cent would amount to something like $2,700,000.00 and was set aside to pay all expenses as Mr. Bell understood it (Bell, I, 142). It did not arouse any suspicion on Mr. Bell's part. When the $13,000.00 was paid, he knew the settlement had been made and had gone through. He did not know that the 30 per cent was

for the payment of expenses alone. It was to go into the hands of trustees to pay expenses and to remit what balance there was left, and at that time they had not collected everything from the custodian which the custodian owed the companies. Further remittances were to be made to the companies. They collected enough to pay the 11 per cent of their impoundment (Bell, I, 159-160).

Asked if the home office questioned his payment of the check to Mr. Street, Mr. Bell said that he made a report once a month to the home office which showed every figure of the income and outgo of his department. It is just a copy of his books, the accounts. The entries are just literally copied off the books. No letter of explanation accompanied it and nobody ever called him up or wrote him or made inquiry as to what that check was and nobody ever questioned him, not even the auditor. Mr. Bell thinks he must have voluntarily mentioned it in discussing the Missouri settlement with the home office later on in a personal conference. He may have mentioned these checks and unquestionably did as a matter of interest. He has no recollection of such a conversation. They have conferences twice a year with the home office people in which all sorts of matters are discussed and the policies of the companies. Nothing specific came up with it, nor any authorization in connection with the payment of that check. Mr. Bell would most assuredly remember it if any officer with authority in the home office had made any objection to it (Bell, I, 151-152). Mr. Bell did not discuss that subject of 5 per cent assessment with his home office or anyone in authority at that time. He discussed it with them in a matter of casual information the next time he had a conference with his home office, and no objection in the world was raised to this payment by the home office. It was reported in the same manner as was the $5,000.00 item during the month in which he paid it out. He is quite sure it was, because every transaction for any one month appeared in that month's account when that report went to the home office. No objection was ever raised to that at all. The auditor did not raise any objection a year later, because it was shown as attorneys' fees, legal expenses, in connection with the Missouri litigation, which, incidentally, is not an unusual thing over the years. There is nothing unusual about expenses for Missouri litigation (Bell, I, 153-154).

Neither Mr. Layton nor anybody in his company, to his knowledge, ever authorized Mr. Street to pay or knew that Mr. Street had paid or had any conscious intimation that he was going to pay or had paid any money to bribe anybody or to induce anybody to agree to a settlement of the litigation (Layton, III, 82).

GROUP THIRTY-TWO.

Defendant's Exhibit 188 (II, 247) is a letter from C. R. Street to John M. Thomas, President of National Union Fire Insurance Company, dated March 17, 1936. It is as follows:

> "Enclosed check for $8,841.79 is 11% of the amount of premiums you had impounded in Missouri as of May 1st, last. Please credit the check accordingly and then send me your check for 5% of the amount of such impounded premiums as of May 1st, which according to our records, were $80,340.00.
>
> Was in New York last week and this was the arrangement made with some of the 'big boys' * * * Will explain when I see you at our April meeting or sooner.
>
> Make check to me as Agent rather than personal."

Mr. Thomas knew that this was in connection with the Missouri litigation (Thomas, II, 253). The settlement was satisfactory to this company (Thomas, II, 244).

Mr. Thomas was asked who were understood, by people in insurance circles, as being the "big boys." He said that this is pretty hard to answer. There are a lot of big boys in the insurance business. Witness would have a general idea of some of the important men in the business, but it is not a club and it is not a coterie or a definite number of men, and does not mean any particular number of individuals. Mr. Thomas could not read Mr. Street's mind about that, and he does not know that he had any specific people in mind. Mr. Street meant that he had consulted some prominent people in the insurance world, but had not told Mr. Thomas who they were. Mr. Thomas very naturally thought that Mr. Street probably meant the executives of some of the larger insurance companies—perhaps the executives of the Home and Great American—some of the larger companies that had a much greater stock (Thomas, II, 250-251).

Defendant's Exhibit 187 (II, 259) is a requisition of National Union Fire Insurance Company for a check payable to C. R. Street, agent, for $4,019.00 to be sent to him at Chicago, Illinois. It states that it represents 5 per cent of the Missouri impounded premiums as of "5/1/35." It directs that it be charged to "Agts. Bal. - Mo. Imp. Prem. Ac." and is marked "Rush."

Mr. Thomas did not prepare Defendant's Exhibit 187. He evidently directed it to be prepared. He evidently phoned up. This company uses the voucher system all the way through (Thomas, II, 256-257). Mr. Thomas did not tell them to charge it to agents balances. He assumes they did it because it was in line with the regular method of keeping the account (Thomas, II, 257). Mr. Thomas does not know whether or not he instructed them to rush this. He thinks that in most offices when the head of an office puts an order through they give it immediate attention. That is the only way he could account for the "Rush." Mr. Street did not request that he rush it, but Mr. Street's letter was dated March 17. Mr. Thomas' reply was dated March 23, six days afterward. They had been six days delayed, and Mr. Thomas supposes, when he telephoned this up to the cashier's desk or sent it up, being from the head office, it would be given immediate attention. The word "rush" is not Mr. Thomas' mark. He does not know who that is. He does not recall having directed them to rush it (Thomas, II, 260).

This company had a Missouri impounded premium account which had been running over several years. That account was the same as an agent's account, and the impounded premiums were charged to that account. They sent the impounded premiums to the custodian, who had not yet demonstrated his right to keep those premiums. They could not charge them off; so they carried that account as "Balance Due from Agents," the custodian being in the light of an agent. They handled it the same way they handled premiums in the hands of a local agent, which premiums the home office had never received. They treated it as a receipt of the company, but they did not have it. The other fellow had it. When they got their payments on this they credited it to the Missouri impounded premium account. That is what this voucher shows. When they pay out money it is charged to agent's balance (Thomas, II, 257-258). In this letter Mr. Street did not attempt to say or give any idea what

it was for, and it did not enter Mr. Thomas' mind to question what it was for (Thomas, II, 252). He directed the issuance of this check, but had not the slightest idea what it was for (Thomas, II, 256). Mr. Thomas did that because of his confidence in Mr. Street. He rather thinks he would have done it if some other insurance executive had asked him, probably not so readily; he might have questioned it. That is purely supposition. He does not know what he would have done. It depends on who the other man was, whether he was chairman of the committee or not (Thomas, II, 253).

Mr. Thomas received this letter (Defendant's Exhibit 188) from Mr. Street and answered it on March 23 (Thomas, II, 248).

Defendant's Exhibit 189 (II, 249) is a letter to C. R. Street dated March 23, 1936. It is as follows:

> "We have been pretty badly disorganized here in Pittsburgh, due to the disastrous and unprecedented flood conditions, so that your letter of the 17th inclosing a check for $8,871.41 did not reach me until Friday. We have been without light and heat until this morning, when we are going again.
>
> The second paragraph of your letter states that the amount of National Union impounded premiums in Missouri as of May 1st, according to your records is $80,340.00. I am assuming this is an error because the correct amount is $80,379.93 and your check for $8,841.79 is just 11% of that correct figure.
>
> Inclosed is our check for $4,019.00, payable to you as agent, which is 5% of the correct figure of $80,379.93. This, I hope you will find correct.
>
> I shall be very much interested in getting more complete information about the transaction when I see you at White Sulphur in April."

This has been three years ago and Mr. Thomas does not know what he thought; but he thinks he is safe in saying that Mr. Street asked for this, and Mr. Thomas just sent it to him, feeling and knowing that later on they would get an accounting for it in the regular way (Thomas, II, 252). Mr. Thomas had known Mr. Street ever since Mr. Thomas was a boy 17 or 18 years old He has known Mr. Street intimately for 40 years. He used to work for Mr. Street and with him. Mr. Street

kind of helped train Mr. Thomas in the business, and Mr. Thomas never in his life knew Mr. Street to turn a crooked trick (Thomas, II, 251), and Mr. Thomas assumed, as they always have in the past, that in due time they would get a regular accounting of it like all committee matters are handled. The custodian account is still open, so far as Mr. Thomas knows (Thomas, II, 263-264). Witness, himself, has never gotten an accounting for this money (Thomas, II, 254). He does not know whether his company ever got an accounting; he assumes not (Thomas, II, 261). The company might have gotten an accounting and witness would never get it. It would go directly to the auditing department. That might have been true; but it develops now that they did not (Thomas, II, 254). The reason they had suspense files in their office is to call things to mind, not put on suspense account because there was no occasion. They did not know what it was for, but they knew it was chargeable to Missouri impounded premiums (Thomas, II, 263).

He does not know why he did not ask Mr. Street in the letter of March 23 to send him a letter explaining it, nor why he did not later write Mr. Street for an explanation, except that he thought he would see him. The April meeting is usually the second week in April. He thinks this year it was about the 14th or 15th, and he had thought he would see Mr. Street in a couple of weeks and get the story. Mr. Thomas nearly always attends these Western Underwriters Association meetings. He was in the West for many years and has been East for eleven years. In his office they have a bowling league each winter. Along about the first week in April, the bowling league had its annual wind-up and tournament and served a lunch. Mr. Thomas got hold of a bad "hot dog" or something, and was taken violently ill. He was in bed two weeks. It was nearly a month before he got out of the house. That is why he was not at the meeting (Thomas, II, 256). He does not know that he can answer any better than he has, why he did not get the explanation in some other way at some other time. It just never occurred to him. It was finished business in his mind (Thomas, II, 256).

Mr. Thomas thinks that in 1936 the assets of the company were $15,000,000.00 or $16,000,000.00. Its in-

come for the year 1936 was $7,513,352.00. Its losses and expenses in round figures were about $6,450,000.00. Mr. Thomas, as president of a fifteen or sixteen million dollar company, was not charging his mind all the time with an expense of about one tenth or one hundredth of 1 per cent. If he had, he would be crazy in thirty days; he would not be able to give any attention to the big affairs of his company, if he worried himself all the time about these little items (Thomas, II, 261-262).

This company's payment was $4,019.00, which was 5 per cent of its impounded premiums. That was just as much in proportion to this company as the Home paid, and was just as important to this company as the contribution of any other company, regardless of the amount. But it was the amount of a small loss too, so far as money is concerned. While it is in a small company, $4,000.00 is not a sum to make a deep impression on your mind. A small loss would run more any day (Thomas, II, 255). This company does not pay out a $4,000.00 fire loss without having a very thorough investigation. The size of the file would depend on how many calls were made up on it (Thomas, II, 263).

Mr. Thomas understood that the communication was from Mr. Street and that he was the chairman of the committee (Thomas, II, 252). Mr. Thomas did not question this transaction on this request, because it came from Mr. Street, and Mr. Thomas understood that Mr. Street was on the committee, and that the committee was handling the matter (Thomas, II, 260). The Missouri rate litigation became so involved that Mr. Thomas left it very largely in the hands of the committee. He gave up five years ago trying to keep track of it. The Subscribers Actuarial Committee was representing his company and looking after that. Mr. Thomas has known Mr. Street very well for many years, and knew that he was chairman of that committee at that time, and that as a practical matter he was the person handling the litigation for his and other companies; that was satisfactory to Mr. Thomas (Thomas, II, 243-244). So far as Mr. Thomas knows, neither he nor his company ever asked Mr. Street to do anything about this litigation and ever asked or authorized Mr. Street to use any of this money that it paid back to him to bribe anybody, or to get the compromise agreed on with the state officials, and never knew or had even the slightest intimation that he had done so until they saw the charges

to that effect in the newspapers this spring (Thomas, II, 262). Mr. Thomas knew that his company had a case pending at Kansas City (Thomas, II, 243). He supposes that he heard, about May or June, 1935, that a settlement agreement had been entered into pertaining to these cases, and he assumes that he was advised about February, 1936, that the federal court had entered a decree approving the settlement. He does not remember the dates or anything of that sort. He received a regular circular letter from the committee which purported to be sent to all of the companies and it advised him of the settlement and the terms thereof (Thomas, II, 244). He must have known that, under the terms of the settlement, the policyholders were to get 20 per cent and the companies 50 per cent immediately, and that 30 per cent was to be turned over to Mr. Street and Mr. Folonie as trustees, out of which fund they would pay all the expenses of litigation, including attorneys' fees, court costs, and everything else, and that if any was left it would be disbursed to the companies (Thomas, II, 244). Mr. Thomas supposes that he knew at that time that the trustees, Street and Folonie, had a fund out of which to pay any and all expenses of Missouri litigation, because he evidently got a copy or the circular, or the committee's letter, which was read awhile ago; but if he connected it up at that time he does not recall it now, and does not imagine that he did (Thomas, II, 253).

There is nothing unusual about the fact that Mr. Street did not make any explanation and that Mr. Thomas did not ask him to (Thomas, II, 254). It did not challenge Mr. Thomas as being unusual that the "big boys" were making the arrangements in New York, rather than the committee, all except one of whom lived in Chicago, knowing Mr. Street as he did. Mr. Thomas is afraid he did not give this transaction any consideration (Thomas, II, 260). It never occurred to him that there was anything unusual or out of the way about it. Such a thought never crossed his mind. The long background (acquaintance with Mr. Street) outweighed the peculiarity of the particular letter in Mr. Thomas' estimate of the whole transaction (Thomas, II, 251-252). Mr. Thomas does not know that it was an unusual transaction. It was not so unusual as to make an impression on his mind that he would carry around with him, waiting for an opportunity to see Mr. Street and ask what it was all about (Thomas, II, 255). Mr. Thomas has been in the business a great

many years. If anything of this sort has ever been done before, he never knew it. He was not suspicious. It never occurred to him to think there was anything underground about it (Thomas, II, 252). He had never had such an experience to put him on his guard in the slightest. He had never seen anything dishonest about the man to put him on his guard (Thomas, II, 252).

This company is a relatively small participant in this and would naturally follow the lead of those who were directly interested (Thomas, II, 251).

Mr. Thomas did not go to the April meeting, which he thinks was either at White Sulphur or Hot Springs, and he did not see Mr. Street at that time nor prior to that time. Mr. Thomas may have seen Mr. Street afterward, but not to discuss this matter. It was never mentioned. Mr. Thomas supposes that he did see Mr. Street afterward, and may have seen him several times. Mr. Thomas did not ask Mr. Street to explain it, because this was finished business. It completely passed out of Mr. Thomas' life (Thomas, II, 253-254).

In reference to the letter of March 23 (Defendant's Exhibit 189, II, 249), Mr. Thomas said that he was naturally interested in getting the information. Yet he did not get it. Asked if he could explain that statement, Mr. Thomas said:

> "But do you suppose a man who is busy and has a good many things on his mind would carry this around on his mind? * * * It completely passed out of the picture so far as I am concerned. We have a good many things to do besides this Missouri rate case."

Of course, Mr. Thomas was very much interested in getting the details; but he does not know that he can make a better answer than he has already done as to why he did not get them. This naturally passed out of his mind (Thomas, II, 254-255). Mr. Thomas does not think he discussed this settlement with other insurance executives at various times. If he did, it was in a purely casual way. It was finished business. A settlement had been made. They could not do anything about it. It was finished so far as the compromise settlement was concerned. Mr. Thomas considered that when the court formally assented to the settlement that the settlement

was finished business, so far as the terms of the settlement, the court, and all that sort of thing was concerned. As to when they got their money was purely incidental. They knew that they would get it some time. This company had been out of it for eight or ten years. Another one, two, five or six months did not make any difference. Mr. Thomas does not know why they were making the assessment in March. That was all a part of the settlement (Thomas, II, 261).

GROUP THIRTY-THREE.

Mr. Smart is aware of the fact that his two companies had their suits in the Federal District Court, Western District of Missouri, starting about June 1 (Smart, III, 115). He did not attend the meeting at Hartford on May 3, 1935, and never heard of such a meeting. No one who was present ever told him about it (Smart, III, 115). These companies depended upon the Subscribers Actuarial Committee, of which Mr. C. R. Street is chairman, with its headquarters in Chicago, for managing that litigation for them (Smart, III, 115). Mr. Smart does not believe he can answer when he heard of the compromise. He does not know just when he did hear of it (Smart, III, 116). These companies had notice of the decree in the Missouri rate litigation (Smart, III, 115-116). They had a letter dated February 4 citing the decree. They probably had it on the sixth or seventh. These companies received it in due course of mail, which was shortly after February 4, 1936. At that time they received 50 per cent of their impoundments from the custodian and were to receive 80 per cent, less expenses. Mr. Smart recalls that 30 per cent was set out to trustees, Street and Folonie, for expenses. The other 20 per cent was to go to the policyholders (Smart, III, 116). Mr. Smart admitted that in a general way $93,043.54 was the total impoundments to May 1, 1935, of his two companies. That does not quite agree with what he had in mind. He thought it was $102,000.00 (Smart, III, 116). He then said that what he had in mind was the total impoundments up to November 10. He would take this figure $93,043.54 as the impoundments of his companies to May 1, 1935 (Smart, III, 116). The information came to these companies, but Mr. Smart cannot quote the figure as to the court impoundments which all companies had involved in that rate litigation. He would say it was upward of $9,000,000.00 (Smart, III, 117). He understood

that if the entire 30 per cent was not required for expenses, the remainder was to be returned prorated to the companies (Smart, III, 117).

Defendant's Exhibit 275 (III, 122) is a typewritten memorandum which is as follows:

> "Memorandum of telephone conversation from Paul L. Haid, New York City, to James D. Smart at New Hampshire Fire Insurance Company office, Manchester, N. H.
>
> To facilitate transaction Mr. C. R. Street, who as you know, has directed the rate litigation in Missouri, has asked us to transmit to you an additional payment amounting to 11% of the total amount of impounded premiums as of May 1st. We shall forward check at once for $10,234.79. As Mr. Street has immediately to meet expenses which require approximately 5% of the impounded premiums, may we promptly have your check for $4,652.18 made payable to C. R. Street, Agent, or if you prefer, to R. J. Folonie, Agent. Do not make your check payable either to Mr. Street or Mr. Folonie as Trustee. We presume you will want to charge this as legal expense March 21, 1936."

The check (Defendant's Exhibit 274, III, 121), was mailed to Mr. Haid at his request. He called Mr. Smart on the telephone and he (Mr. Smart) requested their treasurer to issue such a check which the treasurer did. Mr. Haid tried to explain what the check was for, and Mr. Smart told Mr. Haid he thought it would be wise if they had a stenographer take it down. Defendant's Exhibit 275 is that statement. It was made on a telephone call from Mr. Haid and this statement really tells the story. The statement was transcribed by a stenographer in Mr. Smart's office. Mr. Smart had her take it over the phone from Mr. Haid after Mr. Haid had talked with Mr. Smart. It seemed to be quite a long, drawn-out explanation and Mr. Smart thought he had better have it down on paper; so he asked Mr. Haid to repeat it over the phone to the stenographer. Mr. Haid knew he was repeating it to the stenographer. Mr. Smart called the stenographer and this is what the stenographer gave Mr. Smart. Mr. Smart did not listen in on the conversation with the stenographer, but he would say this is just exactly what Mr. Haid told him

only perhaps the wording is a little different. Mr. Smart would not say the wording is different, but he thinks Mr. Haid gave it a little longer to him, but the statement embodies all that Mr. Haid told him (Smart, III, 117-118). Mr. Swallow did communicate with Mr. Haid and did not hear the telephone conversation (Swallow, III, 127). The check for 11 per cent of their impoundments mentioned in the memorandum came in later but it was not in their hands before they issued the 5 per cent check (Smart, III, 118). Mr. Haid did not tell Mr. Smart anything more than is in this memorandum as to whose the 11 per cent check was to be. He simply stated that they were to pay back the 11 per cent.

"Q. Whom did he mean by 'they,' if you know?

A. Mr. Street primarily.

Q. The committee, or the trustees, or who?

A. The trustees I presume. I don't think he mentioned who it would be, but we did receive immediately 11 per cent" (Smart, III, 118).

Mr. Swallow and Mr. Smart signed the check (Defendant's Exhibit 274) (Swallow, III, 126). They transmitted the check, and their treasurer, Mr. Swallow, sent a letter (Defendant's Exhibit 276) along with the check (Smart, III, 120).

Defendant's Exhibit 276 (III, 123) is a letter dated March 21, 1936, from George W. Swallow, secretary-treasurer to Paul L. Haid, President of the Insurance Executives Association. It is as follows:

> "As requested by your telephone conversation with Vice President Smart today, we are enclosing check to the order of C. R. Street, Agent, for $4652.18 which is in payment of expenses in connection with the Missouri rate case.
>
> We understand that we are to receive from you an additional refund of impounded premiums amounting to $10,234.79."

Mr. Swallow was induced to sign the check because Mr. Haid's request seemed to tie in with the explanation given in the letter under date of February 4, 1936, outlining the terms of the settlement and explaining the method of handling the distribution (Swallow, III, 127). The letter states, "That money coming into the hands of

C. R. Street and R. J. Folonie, trustees, will be employed to discharge debts," etc. The wording, "coming into the hands" indicated at some future time, as though they had not at that time received it, and that this money was needed to meet expenses as outlined in paragraph ten of that letter. Mr. Swallow was aware that the entire 30 per cent went into that fund to Street and Folonie, but this would indicate that they had not as yet received it. The letter was written on February 4, 1936. They had not yet received anything out of that 30 per cent at that time. They received it a short time afterward (Swallow, III, 127).

A very short time before this they had received 50 per cent of their impoundments from the custodian of the federal court; so Mr. Smart knew that the 11 per cent was not out of the 50 per cent. Of course it must be out of the 30 per cent. Mr. Smart undoubtedly so understood it at the time (Smart, III, 118). Mr. Haid told Mr. Smart that the 5 per cent was to meet legal expenses. It is true that the memorandum merely says expense but the last words are, "We presume you will want to charge this as legal expense," and they did so. That is where Mr. Smart got the idea it was legal expense. He did not ask Mr. Haid what legal expense it was. He did not know without asking. Mr. Haid was acting as a transmitting agent, simply facilitating the work of getting in this 5 per cent in order to clear up this situation. Mr. Haid told him that, before Mr. Smart took the statement (Smart, III, 119). It did not seem strange to Mr. Smart that he would get a check for 11 per cent out of the 30 per cent impounded fund, a fund for expenses, and at the same time be called upon for 5 per cent of the impoundments for legal expenses. This has been a trying situation for years, and it looked as though it was coming to a conclusion and that they needed cash immediately. It is true that he had been advised that there was 30 per cent of all the impoundments set aside for expenses, but that was set aside February 1, and his companies had no way of knowing whether they had funds in their hands or not. It is a natural assumption that if they were able to pay 11 per cent out of the 30 per cent fund there remained sufficient for legal expenses. He responded so readily in paying 5 per cent of expenses when there was a fund already provided for it, because they were depending entirely upon "the Actuarial Committee—Mr. Street," and this being transmit-

ted through Mr. Haid was enough for Mr. Smart (Smart, III, 119). Mr. Smart responded so readily to Mr. Haid's request because Mr. Haid was acting as an Eastern representative of all the companies in order to facilitate this transaction. Mr. Smart knew that at that time; he took Mr. Haid's word for it. He did not have anything from Mr. Street or Mr. Folonie (Smart, III, 120). It did not arouse any suspicion when they said, "We presume you will want to charge this as legal expense." The memorandum does not definitely say where to charge it, but it seemed logical to charge it as legal expense (Smart, III, 120).

Mr. Smart realized that the total impoundments in Missouri were over $9,000,000.00 and that 30 per cent of that would be more than two and one-half million dollars. Notwithstanding that, he contributed a check for his two companies amounting to $4,652.18 toward expenses. He did that without knowing anything more about it than what is on his memorandum (Exhibit 275). He never saw Mr. Haid after that to ask any explanation of these legal expenses. He never saw Mr. Street after that. He never had a letter from Mr. Haid. Mr. Smart never saw Mr. Street in his life (Smart, III, 124). He never knew Mr. Street (Smart, III, 124). He saw Mr. Haid a number of times subsequent to that date, but this question never came up. He never asked any explanation and none was ever given to him (Smart, III, 124). No accounting has been had for this 5 per cent from anybody (Smart, III, 124). As a further explanation of his actions, Mr. Smart said they were getting in a lot of money from this committee. They were paying some of it back, which Mr. Smart understood to be the necessary expenses for getting in what they got in. When they were getting in money and only paying some of it back, Mr. Smart thought it was all right, and they were very happy to see the conclusion, and felt that they were reaching the conclusion of this unhappy situation (Smart, III, 126).

Asked why he did not take this check up with his company, Mr. Smart said he did not refer this check to his board of directors, nor have it referred to them, because it is the usual business to handle this matter by the administration. That is the way to get money out of the companies under conditions where a matter is being handled by a committee in whom they have entire confidence, as they did in this case, and in which a large

number of companies are interested. If a fire claim is presented to the company they would have to have a proof of loss signed and sworn to and if the claim is paid they are satisfied of the loss, and have the proof of loss on file. In case a suit is brought and they are contesting, the claimants would have the decree of the court in order to collect and they would have the decree of court as a record, he presumes, and they would have the receipt of the party that made the recovery. They do not take such precautions in the matter of expenses under circumstances such as the 5 per cent for expenses (Smart, III, 125).

Neither Mr. Smart nor anybody in his company, so far as he knows, had any knowledge or any information that Mr. Street was going to use any of this money either for bribery or to pay anybody to get them to consent to this compromise agreement nor did any of them have any intimation whatever of anything connected with the use of money for any improper purpose or for any purpose except legal expenses (Smart, III, 124). When this matter was developed it was a shock to them (Smart, III, 125).

GROUP THIRTY-FOUR.

The Northern owns the London and Scottish and assumes the management and control of it. That was true in 1935 and 1936 (Barbour, I, 339). Mr. Barbour should think that, roughly, 2 per cent of his two companies' business in the United States was Missouri business (Barbour I, 362). They had a very small interest there (Barbour, I, 346). This group still does a small business in Missouri. It has (witness presumes) closed a good many agencies in Missouri, but still has some representation here and there. There is pride about being in states (Barbour, I, 357). Mr. Barbour got no report as to the Hartford meeting and asked for none, because for years there had been discussions of every kinds, shapes and descriptions of the litigation in Missouri and, having a very small interest there, he just did not pay any attention to what was going on, but left it in the hands of those who were in charge of it, who were Hicks and Folonie. Their business in Missouri is a small part of their United States business and he did not think there was anything he could do individually to help the situation (Barbour, I, 346). Mr. Barbour did not dismiss the

law suit because he believes it is of advantage to his company to join with other companies in a matter so important as Missouri litigation, whether or not he would do it if only his own interests were concerned (Barbour, I, 358). During 1935 and 1936 Mr. Barbour knew that there was rate litigation in Missouri involving insurance companies (Barbour, I, 337). Mr. Barbour will always be glad to learn that any litigation is settled, and was very happy about this settlement. He was glad to get it out of the way (Barbour, I, 347). He does not remember when he learned that the compromise had been effected, and does not know when it was effected; he presumes he knew of it as it came out in the newspapers, or if there were any advices sent up by the Subscribers' Actuarial Bureau or any other of the company organizations. He cannot answer whether the Actuarial Committee notified him (Barbour, I, 346). Asked when he "next heard of the compromise" after Mr. Street had suggested it at the May, 1935, meeting, Mr. Barbour stated he was trying to give some better answer than simply that he cannot recollect when he heard of the compromise. He does not recall that he heard of it from the time of that meeting held in May, 1935, up until he was called on for an assessment. When he learned the terms of the compromise he did not discuss that among his companies. These groups that would meet and discuss Missouri litigation may or may not have discussed it after Mr. Barbour learned the terms of the compromise. He has no recollection one way or another, but undoubtedly he did. Somebody may have said something (Barbour, I, 348-349). Whenever the men got together there was frequently a discussion of the Missouri rate litigation. It is hard to answer whether these discussions ceased after this meeting in 1935, but Mr. Barbour should imagine not. He remembers no discussion of any kind, shape or nature. There may have been and there may not have been. "You know we are quite a gossipy crowd, this insurance crowd. We are apt to talk about anything that is on the minds of people * * * I don't suppose I could tell you anything that was said in any discussion in the last ten years, unless it was just last week, or I made a note of it" (Barbour, I, 348). Prior to this 1935 meeting Mr. Barbour never had discussed a settlement of these cases with Mr. Street in any way. It came to him as absolutely news. Afterwards he learned that his companies contributed 5 per cent of something. He has

forgotten about whether that was a year later (Barbour, I, 345-346). In 1936 he was called upon to contribute 5 per cent of his impounded premiums to Mr. Charles R. Street. Mr. Barbour knew nothing about it until he was asked for a contribution. He does not know whether there was a compromise made before or after that or anything else in connection with it (Barbour, I, 349). Counsel asked whether or not the compromise was a happy one and Mr. Barbour said he was very glad to get the money back which they received from the compromise (Barbour, I, 349). He knew only from gossip that Mr. Street was acting for him in negotiating the compromise. Mr. Street and others of the managers in Chicago had been acting for all companies in the litigation, and when he learned as a matter of gossip that Mr. Street was acting, he assumed that to be true and it was absolutely satisfactory to him. He went under the assumption that Charles R. Street was acting on behalf of all companies including his company in negotiating a settlement (Barbour, I, 349-350). The 1935 New York meeting was four years ago. Mr. Barbour just does not remember. He cannot tell whether anything was said. There was discussion, but he cannot remember what was said (Barbour, I, 341). Mr. Barbour does not remember the figures or percentages allocated to policyholders or the percentages that came to him in the compromise. He does not remember that 30 per cent of the impounded premiums was allocated, first for the payment of the expenses, and the remainder to the companies. He did not charge his mind with any of those details. He did not and does not know the terms of the settlement. He knew that he had been subpoenaed here, and he absolutely wanted to give any information he had, but it never occurred to him to look these matters up. It is not a lapse of memory about all these matters; he does not consider it a lapse of memory not to have been able to give details that are three or four years old, or figures that are handled through an accounting division. He absolutely sincerely wants to give all of the facts he can (Barbour, I, 350). Mr. Barbour's attention was called to the fact that he testified that the amount involved was very inconsequential insofar as his general business is concerned, and he answered, "Well, I won't put it quite that way, but our interest in Missouri in connection with the whole United States was not important enough to spend a great deal of time over it" (Barbour, I, 347).

"Q. Didn't I understand you to say there had been many conferences concerning the Missouri rate litigation?

A. No, I don't think I said that.

Q. Didn't I understand you to say that in substance a moment ago?

A. I said many statements had been made and many lawyers—whenever the lawyers involved, whenever we came together in the meeting, would tell us something about Missouri. It was a constant matter of discussion between the men * * * And if a lot of men got together and happened to speak of Missouri, they would start to talking about Missouri * * * One of those things in the air all the time" (Barbour, I, 347).

"Q. Who in your office would have the files showing advices or information that you received from time to time from the Actuarial Committee in regard to this litigation?

A. It might be in any one of four files.

Q. Who would have charge of those files?

A. My file would be in charge of my Secretary, Miss Whaley. Our assistant manager Mr. Lane has a file in which he has some information about this and that, the head of our Western department.

Q. What is his name?

A. Earl D. Patton has a file and the accounting department has a file.

Q. And those four files contained all the information from your company?

A. That had to be retained, yes."

Mr. Barbour said there are a great many files that they do not retain because they think they are useless. Normally, once a year they clean out matters that they think of no further importance. So far as he knows, they have not done any cleaning out of their files in this Missouri rate litigation, and so far as he knows, none of them has been destroyed (Barbour, I, 347-348).

Mr. Barbour does not recall the figures, but knows that the impounded premiums were a large sum. He cannot answer as to the amount of this group's impounded premiums (Barbour, I, 339).

Defendant's Exhibit 70 (I, 359) is a memorandum stating that the checks represented 11 per cent of the

impounded premiums as of May 1st, 1935. Under this statement appears the following:

Northern	84743.20
L. & S.	13466.59
Total	98209.79
	5%
	4910.48"

The figure "89" appears in the upper left hand corner and in the upper right hand corner appears the following:

"No.	9321.75
L. & S.	1481.32"

There is a stamp on the bottom as follows:

"Date: March 23, 1936
Check No. 15274."

Mr. Barbour stated that defendant's Exhibit 70 is in his handwriting. He assumes it was made somewhere around "this date," because there is a stamp paid here by his office March 23rd. He presumes he got the information contained in this memorandum from his accounting department—from his books. If he got it from them he requested it, but he did not get the "C. R. Street agent" from the accounting department. He recalls that this memorandum was made after a visit from Mr. Erskine, assistant to Mr. Haid, who, as Mr. Barbour recalls, came to Mr. Barbour's office, and this memorandum was made, either from information partly furnished by Mr. Erskine and partly from the accounting department, or wholly by Mr. Haid and verified by the accounting department. Mr. Barbour assumes this memorandum is the way the check is to be drawn and that information would be gotten from Mr. Erskine. He knows that Mr. Erskine was in his office. He does not know what the figure "89" in the memorandum means (Barbour, I, 351). He does not know who made the figure; he has not the slightest idea now what it means; the figures are all his; this writing is his. These checks "L. and S." and "Northern" mean "Northern" and "London and Scottish." He thinks that refers to the checks they have received for 11 per cent of the impounded premiums. That is what it states, and they turned around and gave

a check made out to C. R. Street, agent, for $4,910.48. Following Mr. Erskine's communication they paid the whole thing for the two companies and then they contributed or returned back.

Exhibit 72 is the check of London and Scottish, reimbursing the Northern Assurance for their proportion of the check, Defendant's Exhibit 71 (Barbour, I, 351-352).

Mr. Erskine told Mr. Barbour that Mr. Street wished to have this money put into an account in his name as agent for the expenses in connection with the negotiations he was carrying on for a settlement of the Missouri litigation.

"Q. Why, you knew the settlement had been made back in 1935, didn't you, and this check is dated in March of 1936?

A. My dear man, I have heard nothing but settlement of the Missouri case since it started * * * so I don't know * * * we never knew when any settlement was finally settled.

Q. And you knew the compromise had been made in 1935?

A. I don't know whether it was carried through or not * * * some case had been settled. * * * Some Missouri litigation had been settled, but there was more than one case in Missouri" (Barbour, I, 352-353).

Mr. Barbour did not find out which case the 5 per cent was being paid for, and he made no inquiry whatsoever from Mr. Erskine, and did not know which case it was for when he gave him the check for 5 per cent. He knew that the 5 per cent was for expenses in connection with the negotiations being carried on by Mr. Street. He does not know what negotiations Mr. Street was carrying on in 1936, and he never asked. If it is a fact that the compromise provided that 30 per cent of the impounded premiums was allocated for the payment of expenses, he probably knew it at some time. He did not ask Mr. Erskine why more money was needed for the payment of expenses. It did not occur to him. He probably did not have in mind at that time that 30 per cent had been allocated. If he had known that, or had it in mind, he probably would not have made inquiry, because he was so thoroughly fed up with the litigation that he made up his mind he would just trail along. He does not mean to criticize the litigation.

"Q. Not thy will, but his be done?

A. That is right" (Barbour, I, 353).

When Mr. Barbour made the check for 5 per cent to C. R. Street, agent, he never gave a thought as to whose agent he was. He considered it merely a designation for a bank account, and, in a sense, of course, Mr. Street might be said to be acting as agent for his companies, but he received no special authority to act as agent. He was merely the man, just as an attorney acts as agent, or someone else. Someone else may go and do something for Mr. Barbour, and in that respect is acting as an agent, but Mr. Barbour had no thought of designating Mr. Street formally as agent and being bound by any acts that he might do without his knowledge, and Mr. Barbour never undertook to find out what Mr. Street did with this money.

"Q. Why didn't you, if you didn't intend to permit him to use it as he saw fit?

A. Because I had great confidence in Mr. Street, in his honesty of purpose, in his ability and his knowing what he was doing.

Q. And it was because of that that you turned it over to him to use as he saw fit?

A. Of course, I expected Street would use it as he saw fit.

Q. Well, you intended for him to act as your agent when you wrote the check?

A. Do you mean legally?

Q. Oh, I don't know whether it is legally or illegally, you intended for him to act as your agent?

A. No, you are mistaken. There is a great difference" (Barbour, I, 353-354).

Mr. Barbour does not remember that he asked Mr. Erskine why he received 11 per cent and was immediately asked to turn back 5 per cent, but he seems to recall that the 11 per cent was money disbursed out of a bank account that was either in the office of attorneys Hicks and Folonie or in the Subscribers Actuarial Committee, or somebody else. It is his recollection that it came from Folonie and Street as trustees. He knew they had trustees, and he may have had knowledge at the time that the trustees were holding 30 per cent of these funds for the purpose of paying litigation. "I don't

bring it together with this particular thing" (Barbour, I, 355).

Mr. Barbour was again asked why he did not ask Mr. Erskine why the trustees charged with paying the burden of the expenses did not pay it instead of calling on him, and he said that the Missouri litigation was so mixed up and his own interests in it were so relatively small, that long before this he just depended on the men who were acting for the companies as a whole to carry out their plans (Barbour, I, 355). Mr. Barbour was asked:

"Q. You knew that Folonie and Street were charged with the payment of these expenses, didn't you?"

Plaintiffs objected to this question because it was not a fact, because the trustees' writing creating the trust was in evidence, and what they were charged with is a matter of law and not a matter of fact (Barbour, I, 355-356). The master overruled this objection on the ground that it is permissible to prove what knowledge Mr. Barbour had concerning arrangements for the payment of expenses when he made a contribution of 5 per cent of his impounded premiums, for the purpose of paying the same expenses (Barbour, I, 355-356). It did not strike Mr. Barbour as a most unusual situation that he was getting a trustees' check for 11 per cent and immediately kicking back 5 per cent to Charles R. Street (Barbour, I, 355). Mr. Barbour considered the transaction no more unusual than a lot of things that happened in Missouri. He thinks it is a great state, and he loves to go there, but they are awfully funny about some things, and if it had not been a Missouri situation he would have thought it most unusual. If it had not been for that whole picture that was in the background Mr. Barbour would have been quite curious (Barbour, I, 356). Mr. Barbour stated that it is a little unfair to say that a Missouri situation is the only thing that kept it from striking him most unusual; that that is not the way he put it, not quite. Asked to put it in his own way, he said that he was prepared for anything in Missouri and to accept it without question from a reliable source, and that he considered Mr. Street, Mr. Erskine and Mr. Folonie were reliable sources. To say that he was willing for anything to be done in order to get rid of Missouri litigation is another story. In all the years that he has been in the insurance business, he has never known in-

surance companies to directly or indirectly attempt to influence a legislature or a court (Barbour, I, 356-357).

All that Mr. Barbour knows of funds having been used to corrupt Thomas J. Pendergast and those in Missouri is what the papers published. He does not know what the facts are. He did not make any effort to ascertain whether or not any of the moneys from his companies had gone for that purpose.

"Q. Why didn't you?

A. Why should I? I didn't authorize anything of that kind. I knew nothing about it. My interest was small. What could I have done?"

Asked whether he felt it his duty to try to find out, if he thought any of his money had been used for a corrupt purpose, Mr. Barbour stated that that is a matter of ethics, and he does not know but what he should, but he made no effort to find out. He just accepted it as another manifestation of Missouri, and thought it would all wash out (Barbour, I, 357).

Referring to the inquiry as to why Mr. Barbour did not try to find out what went with the money after the newspaper publication about Pendergast, Mr. Barbour stated that his company furnished to the federal district attorney in Kansas City, for use before the federal grand jury, photostatic copies of all checks, entries on its books, and other memoranda concerning this money that was paid to Mr. Street; and all the photostatic papers that attorney for defendant has in his hands and has been showing to him were voluntarily furnished by his company to the attorney (Barbour, I, 362).

GROUP THIRTY-FIVE.

The Northern Insurance Company does not operate as part of any group; it is just the one company (Plessner, II, 152).

The litigation for this company was handled through the medium of the "Subscribers Actuarial Bureau." They left it to that "bureau" to look after. Mr. Plessner knew that Mr. Street was at that time chairman of that committee, but did not know that he was in fact handling the litigation. Mr. Plessner thought it was Mr. Folonie. He knew that Mr. Folonie was attorney for the companies and he knows that Mr. Street was not an attorney, but he never had anything to do with Mr. Street. He knew

that Mr. Street was very active in handling this litigation on behalf of his company as well as all the other companies, and that Mr. Folonie was the attorney that was trying the lawsuits; but he believes Mr. Folonie would have to get his instructions or authority from somebody, and that he was not coming to witness' company for instructions. He supposes Mr. Folonie acted under the advice or counsel of the Subscribers Actuarial Committee (Plessner, II, 146). Mr. Plessner cannot testify as to dates, but he believes that it was not until 1935 that an accounting was made of collections in the Hyde suit prior to 1930. They were very dilatory in making a final accounting of the Hyde litigation, and they were equally dilatory in this case. Mr. Plessner believes they still are, because the custodian has not accounted for the balance of the money. The accounting has not yet been finished even in this case. Mr. Plessner paid back $78,000.00 or $79,000.00 here the last month (Plessner, II, 152-153). He did not attend the meeting of insurance executives held about May 2, 1935, to discuss the Missouri litigation. He has not attended any meeting to discuss that litigation or the settlement of it. He has not talked it over with other insurance executives (Plessner, II, 152). During the period 1935 and before, Mr. Plessner had knowledge of the Missouri rate litigation. He knew that his and some 136 other companies had suits pending in the federal court in Kansas City regarding the rates (Plessner, II, 145-146). He learned of the settlement agreement, which was executed in May, 1935 in regard to these cases from advices received from the Subscribers Actuarial Bureau, and he was familiar with the general terms of that settlement as to the percentages. They were 50 per cent to the companies, 30 per cent to the trustees for expenses, and 20 per cent returned to policyholders. He assumes that if it was not necessary to use the entire 30 per cent it would be returned to the companies, but he had no direct knowledge of that; it was not going to the policyholders (Plessner, II, 146-147). He became familiar with the fact that on or about February 1, 1936, the federal court made a decree approving the settlement and ordering distribution in accordance with its terms (Plessner, II, 147).

Asked how it came about that he had the check (Defendant's Exhibit 164, II, 148) issued, Mr. Plessner said that on March 23, 1936, Mr. Erskine, a representative from Mr. Haid's office came to Mr. Plessner's of-

fice and personally talked to Mr. Plessner about this matter, handed Mr. Plessner a check for eight thousand six dollars and some cents, and requested a check drawn to the order of C. R. Street, Agent, for $3,639.20. Mr. Plessner did not recognize the first check as 11 per cent of his company's impounded premiums, nor the requested check as 5 per cent thereof (Plessner, II, 149). Mr. Plessner paid over the money and did not know what it was to be used for. He made no effort to find out except to ask Mr. Erskine (Plessner, II, 152, 150). He made no inquiry of anyone except Mr. Erskine, and Mr. Erskine could not tell him (Plessner, II, 150-151). He asked Mr. Erskine what the requested check represented, and Mr. Erskine said he knew nothing about it; that he was just a messenger to give the $8,000.00 check and to receive the other in return (Plessner, II, 149). Mr. Plessner had no idea at all that the check he gave Mr. Erskine, payable to Mr. Street, was to pay any expenses (Plessner, II, 151). He had the idea that it was to transfer the account in some way or other. He did not know the relationship between Mr. Folonie and Mr. Street at all. Mr. Plessner knew that Mr. Street and Mr. Folonie were trustees and he thought that perhaps this check written to Mr. C. R. street was to establish an account concerning which Mr. Street was going to act individually, and that Mr. Folonie was going to cease to act as trustee. In Mr. Plessner's mind, he had an idea that that was a way of closing out the account and transferring it over to an individual (Plessner, II, 149-150-151). That idea in his mind is based on nothing. It did not come to him at the time, but subsequently. When he issued the check he thought it was just to establish "that account" (Plessner, II, 149). There was no circumstance whatever that caused him to have that in his mind (Plessner, II, 150). When he asked about the matter he was mostly interested in the $8,000.00 check that he was receiving but Mr. Erskine could not enlighten him. He said he knew nothing about it (Plessner, II, 150). Asked whether, as vice-president, he felt it was his duty to find out definitely about that, Mr. Plessner answered, "Always in the belief that an accounting would be made, because in all matters, in all those transactions, an accounting was later made." No accounting was ever made as to this money paid to Mr. Street as agent (Plessner, II, 151). Mr. Plessner does not know when Mr. Street died, and does not know that he lived for some time

after the check was sent to him. He has no recollection whether he read the insurance journals at the time when Mr. Street died (Plessner, II, 151). Mr. Plessner never asked Mr. Street to make an accounting. He never asked the Subscribers Actuarial Bureau to find out what Mr. Street did with the money, and he never asked anyone about it (Plessner, II, 151). The fact that his company was getting in more money than it was paying out did not cause Mr. Plessner to approach the matter with less caution than if it had been the other way around, because in his mind the accounting in this whole matter was rather dilatory anyway. You never had a direct or immediate accounting, but it always came eventually (Plessner, II, 152). No one in this company, so far as Mr. Plessner knows, ever authorized Mr. Street to use, or knew that he was using, any money to bribe anybody or to pay anyone to induce this settlement of the rate litigation or any official (Plessner, II, 153).

GROUP THIRTY-SIX.

The Norwich Union Society is an English company and the Eagle Fire Insurance Company is a New York company. They are under common ownership and common management (Darlington, II, 288). The companies in this group were involved jointly with other companies in the rate litigation in Missouri from about June 1, 1930, to and including the years 1935 and 1936. There were some 137 companies involved (Darlington, II, 288). The "Subscribers Actuarial Bureau" was really handling the litigation. Mr. Street was, of course, in charge of it. The Subscribers Actuarial Committee has its headquarters in Chicago and the companies left the entire litigation to them, or to the chairman (Darlington, II, 297). Mr. Darlington knew that Mr. Haid was not handling the litigation for these companies. He knew Mr. Street very well, and he knew that Mr. Street was in charge of it (Darlington, II, 297). He knew that Mr. Street was handling the situation, or that he was chairman of the committee that was handling it (Darlington, II, 298). Mr. Darlington does not recall the Actuarial Committee's letter dated February 4, 1936 (Exhibit 105). He has no doubt they received it, but cannot swear that they did. In some way or other, he received the information that it contains (Darlington, II, 289). He became aware that the litigation had been settled or compromised

(Darlington, II, 289). He presumes that his information concerning the settlement and its terms came through a bulletin in the same way as the bulletin (Exhibit 105) just shown him (Darlington, II, 290). He does not recall exactly how he became advised—possibly through the usual formal way of advices that they would normally get from those in charge (Darlington, II, 289). Theirs was more of a general rather than a definite knowledge, other than such notices as came to them from time to time, which really did not make a great deal of impression because the litigation had been hanging fire for many years. Their whole thought was, "Well, is it about to be closed?" (Darlington, II, 289-290.) Mr. Darlington recalls that 50 per cent of the impounded moneys to May 1, 1935, was to the companies, 20 per cent to the policyholders, and 30 per cent for expenses. He has not been able to fix very definitely when that information came to him, unless it came through such a notice as Exhibit 105 (Darlington, II, 290). Asked if he had given Mr. Street a check from each of his companies in March, 1936, Mr. Darlington said that checks were drawn by both companies payable to Mr. C. R. Street, Agent (Darlington, II, 290).

Defendant's Exhibit 193 (II, 292) is a requisition of Norwich Union Fire Insurance Society dated "3/23/1936," calling for a check to the order of C. R. Street, agent, for "Legal Expenses Mo." in the sum of $2,201.37. It is stamped "paid, Mar. 23, 1936."

Defendant's Exhibit 195 (II, 294) is a requisition of the Eagle Fire Insurance Company dated "3/23/1936" for a check payable to the order of C. R. Street, agent, to be charged to "Legal Expenses Mo." in the sum of $896.60. It is stamped "paid March 23, 1936."

Asked to explain the circumstances which induced him to make said checks, Mr. Darlington said that to the best of his recollection, Mr. Haid called him on the telephone and said that he was sending by Mr. Erskine checks representing 11 per cent of the impounded premiums, and that there were expenses to be paid; and he asked that they give Mr. Erskine checks for 5 per cent of the impounded premiums on delivery of those representing 11 per cent (Darlington, II, 296-297).

Asked if there was anyone connected with his company who knew about the issuance of those checks, Mr. Darlington said that Mr. Smith, the secretary, came to

his office when Mr. Erskine came over and he told Mr. Smith. Mr. Smith knows about the transaction, but he did not talk to Mr. Haid. He may have talked to Mr. Erskine. Mr. Darlington is the only one that talked to Mr. Haid, and is naturally the only one who knows about it in dealing with Mr. Haid (Darlington, II, 299). As Mr. Darlington recalls it, the expenses were not enumerated; the general term "legal expenses" was used, with the understanding that there would later be a statement showing the application of it; and they were carried on the books as such, pending receipt of that information (Darlington, II, 296). Mr. Darlington takes it that the 11 per cent was out of the 50 per cent that was to come to the companies. That is his impression. He has no impression that it was out of the 30 per cent. It is his impression that they had received no funds before the 11 per cent. He does not recollect that they have received the 50 per cent return impoundments (Darlington, II, 296). He was not and is not sure that Street and Folonie, as trustees, were sending 11 per cent as a part of the 30 per cent that they were holding for expenses. His impression is that the 11 per cent was the first money they had received. He did not recall that they were getting it as a part of the 30 per cent that was to help take care of expenses (Darlington, II, 298, 296). They received quite a number of returns after the date they received the 11 per cent. He does not recollect that they received 50 per cent outright for each company (Darlington, II, 296). Mr. Erskine visited Mr. Darlington's office and delivered the 11 per cent checks. Mr. Darlington had no explanation from Mr. Erskine as to what the 5 per cent checks were for. As Mr. Darlington recalls, he did not discuss the subject at any length with Mr. Erskine, having previously talked with Mr. Haid on the telephone (Darlington, II, 297). He naturally asked some about it, but the fact that it was for general legal expenses answered any inquiry. Mr. Darlington understood that the action was common by all companies which is not unusual in many cases of this character. Mr. Darlington never asked him about the 5 per cent. He does not know that he had opportunity to ask Mr. Street why this 5 per cent was collected, but he never asked him (Darlington, II, 297). Mr. Darlington does not recall that Mr. Haid suggested why the checks were made to C. R. Street, agent, although he will not say that Mr. Haid did not; but they would naturally draw a check of

that kind to someone as agent rather than as an individual. He thinks Mr. Haid must have asked them to make it to Mr. Street (Darlington, II, 297-298). The fact that Mr. Street or his committee was handling the situation was not what induced Mr. Darlington to issue the check. They would have issued the check with Mr. Street handling it, and would have issued the check to anyone acting on behalf of their companies in the same capacity (Darlington, II, 298).

Most assuredly this company did not authorize or know that Mr. Street was going to use or had used any money for the purpose of bribing anybody or obtaining the influence of any official to agree to the settlement of February 1, 1936 (Darlington, II, 298).

GROUP THIRTY-SEVEN.

The parent or main company of this group is the Phoenix Assurance Company of London, Ltd. (Irvine, II, 200). They relied upon the Actuarial Committee to conduct the litigation in Missouri for the companies. Mr. Street was chairman of that committee (Irvine, II, 211). Mr. Folonie was their lawyer in this case, and Mr. Street was the chairman of the committee that he understood was conducting the litigation in Missouri for them (Irvine, II, 212).

Mr. Irvine is aware that there was a Missouri rate litigation pending, and that his companies had impounded premiums. These suits were pending in the United States District Court in Missouri (Irvine, II, 200). He got information about the settlement of the litigation. He believes it came from the Actuarial Committee. This is his recollection. He could not say how soon he had that information after May 18, 1935, nor with reference to the court decree made February 1, 1936. He has no recollection. It is so much a part of the routine of it running along so long, it was almost routine. He got the information from the treasurer of their group, J. F. Cunningham (Irvine, II, 200-201).

Defendant's Exhibit 175 (II, 202) is a check of Phoenix Assurance Company Ltd. of London, dated March 23, 1936, payable to the order of C. R. Street, Agent, for $5,226.18.

Defendant's Exhibit 176 (II, 202) is a typewritten tabulation (Exhibit 175), and purports to be the propor-

tion of this payment that was borne by each company of the group. It is the breakdown of the amount of this check of the companies. They pool their income and expenses (Irvine, II, 201). Said exhibit is as follows:

"Phoenix Assurance Company, Ltd.	$3,865.20
Imperial Assurance Company	1,063.50
Columbia Insurance Co.	190.10
United Fireman's Ins. Co.	107.38
	$5,226.18

Defendant's Exhibit 177 (II, 204) is a memorandum in Mr. Irvine's handwriting, being instructions to the Treasurer to issue a check to which it refers (Irvine, II, 203). It is as follows:

"Px --	$8502.43	)	$11,497.60
Col --	418.21	)	11% of Total
Imp --	2339.71	)	Impoundings up
U.F. --	236.25	)	to May 1/35
	$11,497.60		

Grand Total $104,523.60

One cheque for 5% or $5226.18 payable either, C. R. Street Agent or as preferred to R. J. Folonie
Check $5226.18
to C. R. Street, Agent"
"J. D. Erskine" appears in handwriting.

Defendant's Exhibit 178 (II, 206) is a letter signed by Mr. Cunningham with his initials (Irvine, II, 205). Said exhibit is a letter dated March 23, 1936, to J. D. Erskine, Secretary, Insurance Executives Association, and is as follows:

"Following your visit today with Mr. Irvine, I have pleasure to enclose our check payable to C. R. Street, Agent, in the amount of $5,226.18, covering 5% of the amount impounded by our Group of Companies in the Missouri Rate Case, to May 1, 1935. At the same time, permit me to acknowledge receipt of checks to the following Companies:

Phoenix Assurance Company Ltd.	$8,503.43
Imperial Assurance Company	2,339.71
Columbia Insurance Company	418.21
United Fireman's Insurance	236.25
	$11,497.60

representing 11% of the total amount of impounding by these Companies with the Federal Court Custodian to May 1, 1925."

He cannot say that Mr. Cunningham's letter is the date of his memorandum, because the latter is not dated (Irvine, II, 211). Apparently the letter was written the same day the check was written (Irvine, II, 211). Mr. Irvine would not say that Mr. Erskine could not tell him what the check was for. He does not recall asking Mr. Erskine what it was for (Irvine, II, 210).

The check for $5,226.18 was the result of the visit Mr. Irvine received from Mr. Erskine who, as Mr. Irvine recalls, brought more than one check, and asked for a check in return for a certain sum. Mr. Irvine thinks Mr. Erskine's visit was on the date borne by the check, March 13, 1936. He thinks that Mr. Erskine brought checks from the trustees representing 11 per cent of the impoundments (Irvine, II, 207). Just the two of them were present at the visit between Mr. Irvine and Mr. Erskine. Mr. Irvine does not know whether Mr. Erskine ever talked to his president or anyone else about it. His recollection is that, in order that they have a record or some sort of voucher, he asked Mr. Erskine how this amount was made up, and as he recalls it, he personally took this memorandum in to the treasurer. Mr. Irvine does not remember whether Mr. Erskine waited for the check or whether they mailed it (Irvine, II, 210-211). He does not know from whom the checks were. He recalls that they were payable either to the Phoenix or to all the companies of his group (Irvine, II, 210). He got the check for 11 per cent when he was called on for the 5 per cent. He must have assumed that the 11 per cent was money not needed in the trustees' account for expenses (Irvine, II, 210). At the time the checks were delivered, it was Mr. Irvine's understanding that the Missouri rate case was so settled that 20 per cent was to be distributed to the policyholders, 50 per cent to the In-

surance companies, and 30 per cent to be held for expenses. He knew that the companies got 50 per cent (Irvine, II, 210). As he recalls, Mr. Erskine did not say to whom the check for 5 per cent would be made payable: either one of two, Mr. Street or Mr. Folonie (Irvine, II, 207, 211, 212). Mr. Irvine asked Mr. Erskine to whom the majority of the companies were making their checks payable and Mr. Erskine said, "Mr. Street" (Irvine, II, 207). He made it to Mr. Street because Mr. Erskine said the most of them were doing that (Irvine, II, 211). Counsel referred to the memorandum (Exhibit 177, II, 204), and found that according to the memorandum, Mr. Erskine gave the choice of two men. The memoranda reflects that that was made at the time Mr. Erskine was there. The name, "J. D. Erskine" was written on the memorandum by Mr. Cunningham, the treasurer. Mr. Irvine does not know just why. Mr. Cunningham made the memorandum while he waited in Mr. Irvine's office. Mr. Irvine does not remember what Mr. Erskine said the check was for (Irvine, II, 207).

Defendant's Exhibit 179 (II, 208) is a page from the cash book marked "Phoenix." It bears the entry, "C. R. Street, Agent, Check No. 144."

Defendant's Exhibit 180 (II, 208) is a sheet from the cash book (Irvine, II, 208) for the month of March, 1936. Under "Sundries" there appears the entry, "Missouri Imp. Adj. Acct. $5,226.18." Mr. Irvine thinks that this entry means "Missouri impounding adjustment account."

Defendant's Exhibit 181 (II, 209) is a sheet from a ledger account of the "Missouri impounded premium adjustment account (Legal—other than claim)." Under date of March 31, there is a charge of $5,226.18 which is designated "C. R. Street, Agent, A/C Expenses."

Apart from the ledger sheet, there does not seem to be any reference to expense. Mr. Irvine cannot say why he did not put down on the memorandum, which he made of the visit and the purpose of it, that this check was for expense, apart from the fact that this Missouri litigation had been so long that they had come to regard it as almost a part of their routine. He did not personally make the entry on Exhibit 181, and he did not direct anyone to make it. Mr. Cunningham's letter transmitting the check does not refer to it as an expense check. Mr. Irvine fancies that Mr. Cunningham, the

treasurer, may have directed the entry "Expenses to adjust account" on the basis that any outgoing connection with this rate litigation was treated as expenses (Irvine, II, 209-210). He wrote a check for more than $5,000.00 of his company's funds without knowing what it was for, he would say, because it was a lesser amount than that represented by the checks that Mr. Erskine delivered (Irvine, II, 210). Mr. Irvine does not recall what it was for, but he was willing to give it to Mr. Erskine just the same. The memorandum does not say what it was for (Irvine, II, 207). Mr. Irvine has not since tried to make any inquiry as to where the $5,000.00 went. Neither Mr. Street nor anyone else has ever given any accounting of that to his knowledge (Irvine, II, 214).

Asked what he knew about his companies' impounded funds, Mr. Irvine said that his company had $114,523.60 tied up in the impounded funds as of May 1, 1935, involved in this compromise. He would say that that was the amount involved in the settlement. He would say that he got back out of that sum in February and March, 1936, 50 per cent, which would be $52,261.80, and 11 per cent is supposed to be represented by this check or checks delivered by Mr. Erskine, the two together totaling $63,759.40. That is the amount he got back, and out of that he paid back to Mr. Street $5,226.00 (Irvine, II, 212). Mr. Irvine was asked if he paid the $5,226.00 to Mr. Street under the impression or belief that it was in some way necessary in order for him to get the refund of $63,000.00. He answered, "No"; while he does not recall asking (Irvine, II, 213) he thought that there were certain odd items of expense that had to be cleared up (Irvine, II, 213, 210). He did not ask anyone if this was so. He did not phone Mr. Haid to find out. He knew Mr. Erskine was from Mr. Haid's office. He did not contact or write Mr. Street to find out (Irvine, II, 210). He knew that in the compromise agreement there was 30 per cent of impounded funds set aside to pay the expenses of litigation and this $5,226.00 that he paid to Mr. Street presumably came out of that 30 per cent; he assumed that the 11 per cent that he was getting back was a part of the 30 per cent. He does not recall asking whether that was the case (Irvine, II, 212-213). Out of that 11 per cent he paid to Mr. Street $5,226.00 so that this $5,226.00 that he paid to Mr. Street came right out of the 30 per cent that was set aside for expenses (Irvine, II, 212). He did not know that the 30 per cent

set aside for the payment of expenses was in the hands of Street and Folonie as trustees. He did not know who had it. He paid no attention to the question concerning from whom he got the check for 11 per cent. He does not remember; he does not recall looking at it. All he saw was the amount and that they asked for a check for a lesser amount. He does not know where that money was coming from. The 11 per cent came in and the 5 per cent went out. He did not look to see from whom he got the 11 per cent and did not try to find out why the 5 per cent went out. He asked no questions at all (Irvine, II, 214). He knew that 11 per cent came out of the 30 per cent of the total impoundments; that left 19 per cent of the total impoundments for litigation, which would be approximately $20,000.00 of these companies $114,000.00. Nineteen percent of these companies' money, or about $20,000.00, had either been paid back or was there to be paid back, and Mr. Irvine assumed that the same thing was true with all of the other companies involved in the litigation. Prompted by counsel, Mr. Irvine repeated that in addition to that, he gave Mr. Street $5,000.00 for some other expenses which he knows nothing about (Irvine, II, 213-214).

Mr. Irvine summarized his position by saying that he did not ever take the trouble to find out where he got the money that was paid to him because he knew that the whole affair was being handled by the Actuarial Committee, almost entirely by Mr. Street as chairman of that committee (Irvine, II, 215). He did not really know that the 11 per cent was part of their impounded premiums. Any money that came in connection with the Missouri litigation looked good to him (Irvine, II, 215). He assumed that the money came from the Missouri litigation. He did not look to see. Nobody said so. He did not know who signed the check or why. He does not even remember looking at the check except the amount. All he recalls is that the amount they received is greater than that amount they were asked to pay. He did not look to see as to whether or not they were paying it back to the same people that were paying it to him and had no curiosity (Irvine, II, 215-216). He paid very, very little attention to this matter, because he felt that somebody else was checking up and watching to see that everything was straight and all right. Usually Mr. Irvine would pass to Mr. Cunningham any information that came over his desk and Mr. Cunningham would check into it, and

treasurer, may have directed the entry "Expenses to adjust account" on the basis that any outgoing connection with this rate litigation was treated as expenses (Irvine, II, 209-210). He wrote a check for more than $5,000.00 of his company's funds without knowing what it was for, he would say, because it was a lesser amount than that represented by the checks that Mr. Erskine delivered (Irvine, II, 210). Mr. Irvine does not recall what it was for, but he was willing to give it to Mr. Erskine just the same. The memorandum does not say what it was for (Irvine, II, 207). Mr. Irvine has not since tried to make any inquiry as to where the $5,000.00 went. Neither Mr. Street nor anyone else has ever given any accounting of that to his knowledge (Irvine, II, 214).

Asked what he knew about his companies' impounded funds, Mr. Irvine said that his company had $114,523.60 tied up in the impounded funds as of May 1, 1935, involved in this compromise. He would say that that was the amount involved in the settlement. He would say that he got back out of that sum in February and March, 1936, 50 per cent, which would be $52,261.80, and 11 per cent is supposed to be represented by this check or checks delivered by Mr. Erskine, the two together totaling $63,759.40. That is the amount he got back, and out of that he paid back to Mr. Street $5,226.00 (Irvine, II, 212). Mr. Irvine was asked if he paid the $5,226.00 to Mr. Street under the impression or belief that it was in some way necessary in order for him to get the refund of $63,000.00. He answered, "No"; while he does not recall asking (Irvine, II, 213) he thought that there were certain odd items of expense that had to be cleared up (Irvine, II, 213, 210). He did not ask anyone if this was so. He did not phone Mr. Haid to find out. He knew Mr. Erskine was from Mr. Haid's office. He did not contact or write Mr. Street to find out (Irvine, II, 210). He knew that in the compromise agreement there was 30 per cent of impounded funds set aside to pay the expenses of litigation and this $5,226.00 that he paid to Mr. Street presumably came out of that 30 per cent; he assumed that the 11 per cent that he was getting back was a part of the 30 per cent. He does not recall asking whether that was the case (Irvine, II, 212-213). Out of that 11 per cent he paid to Mr. Street $5,226.00 so that this $5,226.00 that he paid to Mr. Street came right out of the 30 per cent that was set aside for expenses (Irvine, II, 212). He did not know that the 30 per cent

set aside for the payment of expenses was in the hands of Street and Folonie as trustees. He did not know who had it. He paid no attention to the question concerning from whom he got the check for 11 per cent. He does not remember; he does not recall looking at it. All he saw was the amount and that they asked for a check for a lesser amount. He does not know where that money was coming from. The 11 per cent came in and the 5 per cent went out. He did not look to see from whom he got the 11 per cent and did not try to find out why the 5 per cent went out. He asked no questions at all (Irvine, II, 214). He knew that 11 per cent came out of the 30 per cent of the total impoundments; that left 19 per cent of the total impoundments for litigation, which would be approximately $20,000.00 of these companies $114,000.00. Nineteen percent of these companies' money, or about $20,000.00, had either been paid back or was there to be paid back, and Mr. Irvine assumed that the same thing was true with all of the other companies involved in the litigation. Prompted by counsel, Mr. Irvine repeated that in addition to that, he gave Mr. Street $5,000.00 for some other expenses which he knows nothing about (Irvine, II, 213-214).

Mr. Irvine summarized his position by saying that he did not ever take the trouble to find out where he got the money that was paid to him because he knew that the whole affair was being handled by the Actuarial Committee, almost entirely by Mr. Street as chairman of that committee (Irvine, II, 215). He did not really know that the 11 per cent was part of their impounded premiums. Any money that came in connection with the Missouri litigation looked good to him (Irvine, II, 215). He assumed that the money came from the Missouri litigation. He did not look to see. Nobody said so. He did not know who signed the check or why. He does not even remember looking at the check except the amount. All he recalls is that the amount they received is greater than that amount they were asked to pay. He did not look to see as to whether or not they were paying it back to the same people that were paying it to him and had no curiosity (Irvine, II, 215-216). He paid very, very little attention to this matter, because he felt that somebody else was checking up and watching to see that everything was straight and all right. Usually Mr. Irvine would pass to Mr. Cunningham any information that came over his desk and Mr. Cunningham would check into it, and

if there was anything that he thought Mr. Irvine should know he would so advise Mr. Irvine. Mr. Irvine said he did not think Mr. Cunningham knew any more about it than he did, because if Mr. Erskine saw Mr. Cunningham at all Mr. Irvine does not know it (Irvine, II, 216).

Mr. Irvine did not know Mr. Street. He knew his reputation, but that had nothing to do with the fact that he made the check to Mr. Street (Irvine, II, 211). Neither Mr. Irvine nor his company nor any official thereof, so far as Mr. Irvine knows, ever authorized Mr. Street to pay any money to any public official to bribe anyone to influence them to bring about this settlement (Irvine, II, 213).

GROUP THIRTY-EIGHT.

The Potomac Insurance Company was involved in the Missouri Rate Litigation. They got information from the Missouri Inspection Bureau that such litigation had been compromised and settled. It was a printed circular letter sent out by that bureau, giving a synopsis of the terms and dated June 12, 1935. It is defendant's Exhibit 115 (I, 530-531), and attached to it was defendant's Exhibit 116 (which was not offered, I, 530). Mr. Moore, who was vice-president and manager, thinks they came together (Moore, I, 530). He thinks that he heard nothing more about the compromise after the receipt of the letter (Exhibit 115) on June 12, 1935. They may have had a letter from the Actuarial Committee. He does not recall whether they did or not. He would say that the Actuarial Committee sent him a full report of the federal court's decree of February 1, 1936, shortly after it was made, that is, some months later. He is sure it is in their file (Moore, I, 531-532). The percentages of this settlement were 20 per cent to the policyholders, 50 per cent to the companies, and 30 per cent to the companies through their trustees. He knows nothing about the authorized payouts in the 30 per cent. He is sure it was his understanding that the 30 per cent was to bear the expenses of the litigation and if anything remained it was to go to the companies (Moore, I, 532).

The check (Exhibit 117) represents 5 per cent of the impoundings for this company up to May 1, 1935 (Dent, II, 264). W. C. Dent, Assistant Secretary of the company and Mr. Moore's assistant, authorized the issuance of the check (Exhibit 117, I, 533) (Moore, I, 534). It was writ-

ten by the clerk, but bears Mr. Moore's signature (Moore, I, 532). Mr. Moore's signature was attached to that and a number of other checks before he left the office. He was not in the office the day that check was written and delivered. He signed it in blank in advance because it required two other signatures (Moore, I, 534). Mr. Moore was away at the time Mr. Haid made a personal call and said he wanted this money for general expenses. Mr. Dent talked to Mr. Haid (Dent, II, 264). Mr. Haid has his office in New York. He called on Mr. Dent in Philadelphia. This company is domiciled in the City of Philadelphia (Dent, II, 264). It is located in Washington, but its operating offices are in Philadelphia (Moore, I, 539). Mr. Haid was there and left 11 per cent there at the request of Mr. Dent, but Mr. Moore is simply telling what was told him (Moore, I, 539). Mr. Dent has been away from the office and has not been back; so he does not remember much about this matter. He thinks that at that time Mr. Haid brought a check from the trustees of 11 per cent of his company's impoundings (Dent, II, 266-267), but he does not recall. He has been on his vacation and has not been back to the office. He does not recall, or personally remember, having received a check for 11 per cent at that time from Street and Folonie, unless the accountant got it, or unless Mr. Moore saw it. Mr. Dent did not see it (Dent, II, 267). Mr. Dent knew that the 11 per cent that he got from Street and Folonie was a part of the 30 per cent held by them for legal and other expenses of the litigation (Dent, II, 270). Mr. Dent is not sure that at the time he understood that the 30 per cent was held by Street and Folonie out of which to pay the expenses of the lawyers on both sides, and all expenses of litigation (Dent, II, 266). The 30 per cent is not clear in Mr. Dent's mind. Counsel showed him a memorandum (Defendant's Exhibit 118) and Mr. Dent said this was the information he took down on the day Mr. Haid called and said he was collecting $350,000.00. Mr. Dent does not recall whether he understood that Mr. Haid was collecting $350,000.00 in addition to that set out in the 30 per cent (Dent, II, 267). It was written there on the memorandum (Defendant's Exhibit 118, I, 538) and he looked at it and OK'd it. He understood that the $350,000.00 was the amount of money that was required for the expenses, and $275,000.00 had been paid up to date (Dent, II, 266). Mr. Dent thinks that Mr. Haid said he was getting 5 per cent from all of the companies

and wanted 5 per cent from this company which, altogether, would make substantially $350,000.00; that that is what was needed and that up to that time, March 24, 1936, $275,000.00 had been paid (Dent, II, 266). Mr. Haid was, in that manner, calling on Mr. Dent for a check for 5 per cent. Mr. Dent knew that Mr. Street was the chairman of the committee and he had a very high regard for Mr. Street and Mr. Haid, and consequently did not question them very closely. He simply knew they were in safe hands and he gave Mr. Haid the check and kept this memorandum (Dent, II, 267). This 5 per cent that Mr. Dent paid back to Mr. Street came out of that 11 per cent so that 5 per cent paid back to Mr. Street was paid on account of the legal expenses. Mr. Dent thought Mr. Street wanted the 5 per cent back for legal expenses. That was what was in their minds. He did not have in his mind at that time, nor did anybody in his company have it in mind, that they were then, or at any time, authorizing or expecting Mr. Street to use that money or any part of it for bribery or to in some way influence a public official or anybody else to agree to the compromise. There was no such understanding (Dent, II, 270).

Mr. Moore's attention was called to the fact that the check was payable to C. R. Street, agent, and he was asked whose agent he was. Mr. Moore replied, "I suppose he was our agent" (Moore, I, 540).

Mr. Haid said they needed this money for legal expenses. That is about all he said. Mr. Dent asked him what it was for and Mr. Haid said that the Actuarial Committee, the Missouri Committee, needed it in connection with this Missouri impounding affair (Dent, II, 265). Mr. Moore's information is that the check for $2,450.74 was for expenses, nothing else. So far as he knows there was no other explanation. It is the only explanation he ever had (Moore, I, 539, 540). When this check was issued Mr. Moore knew that 30 per cent was already up with the trustees, presumably to cover expenses. He cannot tell why this check was given for expenses. He has no information on that point whatever. He was not back until several days after that and did not talk to Mr. Haid (Moore, I, 540). No explanation was given as to why the check should be made to "Mr. Street, agent" (Dent, II, 270). Mr. Moore stated he was perfectly willing to assume responsibility for the check. He would have issued it, had he been there, because he would have

been told, as Mr. Dent was told by Mr. Haid, that that was the thing they were expected to do; and he would have done it as they always did everything in that case, because they had implicit confidence in the men who were handling it (Moore, I, 540). He probably had known Mr. Street longer than most of these men. He had his experience with Mr. Street forty-three years ago when Mr. Street rode over him as a youngster. His direct contact with Mr. Street was probably in '96 and '97. At that time Mr. Street was assistant to Mr. Eugene Harbeck, Western manager of the Phoenix at Brooklyn, and Mr. Moore was with the Ochen and Munich, a German Company. The latter's offices were right underneath the offices of the Phoenix, and in Mr. Moore's position he had occasion to go up there, probably two or three days a week, trying to "filch" some information that they probably had about maps or some other things that his company could not afford to have yet. "Charlie Street," as they all knew him, was the man that he talked to. Mr. Street would tell him that he had a nerve to come up there trying to get information from them. As he got older Mr. Moore did not know Mr. Street so well, and had no conversation more than to say, "How do you do." He might see Mr. Street at a convention or something (Moore, I, 540-541). He did not issue the check, but as quickly as he received this information he ratified what had been done, based upon that information. It is hard to tell what one would have done, but Mr. Moore is certain if he had been there that day he would have issued the check and been perfectly satisfied that he was doing the proper thing. He could have gotten the check back if he had thought it was wrong, but he did not think it was (Moore, I, 541-542). Mr. Moore thinks that defendant's Exhibit 118 (I, 538) is in the handwriting of Mr. Haid, but he cannot swear to it. It is not Mr. Moore's, Mr. Dent's, nor Mr. Dearborn's (Moore, I, 536). Mr. Dent thinks that the upper part of the exhibit is Mr. Haid's (Dent, II, 265). He thinks Mr. Haid prepared it in Mr. Dent's office because Mr. Dent signed the check in the absence of Mr. Moore, and Mr. Dent wanted some information about it for the files to show (Dent, II, 265). That part of Exhibit 118 appearing below "March 24, 1936," is in the handwriting of Mr. Dearborn, the chief accountant (Moore, I, 537, 539). Mr. Moore thinks Mr. Dearborn got the information from which he wrote it from Mr. Haid, but that is just his thought. Mr. Dent never had

anything to do with it. His duties were underwriting the business, and the whole impounding from the beginning came under Mr. Moore's supervision. What little they knew about it, he knew. Mr. Dent knew nothing. During Mr. Moore's absence, Mr. Haid stopped there, is the story given to Mr. Moore when this thing was brought on; that is why they asked Mr. Haid to make that memorandum; so they could explain to Mr. Moore what it was all about (Moore, I, 539). Said Exhibit 118 (I, 538) is in handwriting which is illegible to the master. Mr. Moore read the bottom part of the exhibit as follows: "This is check No. 22,261, payable to C. R. Street, Agent, $2,450.74, charged to general legal expense in connection with the Missouri impounding. This check was handed to Mr. Paul Haid in the office here, 3/24/36—(the transcript and photostat both say "35')—$5,391.63, which is 11% out of the 30%, something held—I can't read it" (Moore, I, 537, 539). The first dozen lines of the memorandum refers to the court order of distribution that was made in this case which was 50 per cent of the impoundings direct to the companies, to be paid in bonds; 20 per cent to policyholders by the custodian; 30 per cent to C. R. Street and R. J. Folonie as trustees to pay state's expenses and state's attorneys—it looks like "To pay insurance department; to pay attorneys for the companies" (Dent, II, 265-266). The memorandum says that Mr. Haid left a check for 11 per cent of their impoundings, payable out of the trustees' fund, and the check (Exhibit 117) payable to C. R. Street, Agent, is the one described in the footnote (Moore, I, 539).

Defendant's Exhibit 119 (I, 535) is the requisition of the Potomac Insurance Company, dated "3/24/36," for a check to C. R. Street, agent, for $2,450.74 for "General Legal Expenses, in connection with the Missouri impounding."

The voucher was actually written by a stenographer under the dictation of the chief accountant, Mr. George Dearborn. Mr. Moore had already signed a blank check in advance. His initials appear on the requisition. They were made on March 30. The check was issued on the twenty-fourth, 1936. Mr. Moore's initials were on it because all checks that he signs in advance on account of absence must be referred to him, and he approves the vouchers before they are audited (Moore, I, 536). Mr. Dent made the requisition (Exhibit 119) and signed it. The requisitions in this company's office are held. Every

requisition that Mr. Dent signs during the absence of Mr. Moore is initialed by him. Mr. Dent stated the purpose of the payout to be legal expenses. He does not know that they meant anything in particular by the term "General legal expenses" (Dent, II, 268). He does not think that Mr. Haid told him that this was a "special occasion of rating, some special expenses," and does not recall that Mr. Haid said it was for "general expenses." He does not know why they put it "general legal expenses," unless the accountant who makes the checks might have made it that way and Mr. Dent thought it was all right and signed it, just to allocate the expense in some way on the company's books. The accountant may have asked Mr. Dent what way they should have charged it, and he probably said, "general legal expenses" (Dent, II, 268).

GROUP THIRTY-NINE.

The home office of the Providence Washington Insurance Company is in Providence, Rhode Island (Cashel, I, 315; Luce, II, 527). Mr. Luce, its vice-president, has been more or less familiar with the Missouri rate litigation pending in the federal court at Kansas City since 1930 (Luce, II, 519). Mr. Cashel, Western manager, knew that the Missouri rate litigation was being handled for this company through the Actuarial Committee (Cashel, I, 315). The Missouri Inspection Bureau, collaborating with the Subscribers Actuarial Committee, handled that litigation for this company. They had charge of the litigation for this company and the other companies. Mr. Luce knew that Mr. Street of Chicago was actively in charge of the litigation as chairman of the Subscribers Committee. He had no objection to those people handling the litigation for his company (Luce, II, 519). Mr. Luce never at any time attended any meeting in New York or Hartford or elsewhere in which this Missouri litigation was discussed (Luce, II, 524). He heard no discussion of this meeting that was held in Hartford on May 3, 1935, and never heard of it until it broke in the newspapers (Luce, II, 527). Mr. Cashel learned of the compromise that was made in May, 1935, and that after that the federal court entered a decree, and he understood that Folonie and Street were trustees of a portion of the fund; that the fund was broken up—20 per cent to the policyholders, 30 per cent for the payment of expenses, and 50 per cent outright to the company (Cashel, I, 315). He had no

knowledge of a $100,000.00 fund raised about the time that the compromise was entered into. He heard nothing about it or about the improper use of this money until the story broke in the press (Cashel, I, 315). Mr. Luce has a recollection of having read in the paper that the litigation had been settled, and later on seeing a bulletin from the Subscribers Actuarial Committee. It must have been the bulletin that came out about February, 1936, after the decree had been entered approving the settlement by the federal court, that he saw. As he remembers, that was the bulletin that decreed the division of the impounded premiums to 50 per cent and 30 per cent and 20 per cent, respectively; 50 per cent to the companies, 30 per cent expenses and 20 per cent to be returned to the policyholders. It was Mr. Luce's understanding that, if the 30 per cent was not all used in expenses, it would be returned to the companies. That was his assumption. He had no objection to the terms of the settlement as it related to his company (Luce, II, 519-520).

Asked to explain how this check (Defendant's Exhibit 233, II, 521) happened to be issued, Mr. Luce said that late in the afternoon of March 24, 1936, he received a telephone call from Mr. Haid whom he had known for many years and in whom he had implicit faith. The substance of the conversation was that Mr. Haid was mailing them a check for four thousand and some odd dollars, which was about 11 per cent, and asked that they send him a check payable to C. R. Street, agent, for the amount of this check (Luce, II, 522). Mr. Haid did not tell Mr. Luce why he desired this check. He gave no reason at all, and Mr. Luce did not ask him (Luce, II, 522). Mr. Luce was asked if it would not have been simpler and more business-like to ask Mr. Haid what it was for, and he answered that he has found out since that your foresight is not as good as your hindsight. Much of their business is transacted on faith, faith in their agents, their adjusters, and their attorneys. Therefore, when Mr. Haid simply asked over the telephone to do as he has testified, they did it and did not question it (Luce, II, 524). Mr. Luce had the fullest confidence that sooner or later a full accounting of the entire matter would be given to every company (Luce, II, 524).

Mr. Luce directed their treasurer to hand him a check, and did not even write a letter. All the memorandum he made was on a scratch pad when Mr. Haid was doing his

telephoning to the effect that, "I am sending you a check for $4,810.80, and I ask you to send us a check for $2,186.72," which they did. That next morning they got the check for $4,810.80. The checks passed in the mail. That is the substance of all of the conversation that Mr. Luce had with Mr. Haid at that time (Luce, II, 522).

The 11 per cent dividend in the early part of 1936 was not received in the Western department office. Mr. Cashel received no information from the company that there had been such a dividend. Such a dividend was not credited in a specific amount. If it was credited it would be credited just to general expense (Cashel, I, 315-316). At the time of the 11 per cent dividend Mr. Cashel had no information about Mr. Street requesting the company to return 5 per cent to him and had nothing to do with that transaction whatever. They have a separate set of books for their Western department, but that department was not charged with it. The amount of impoundings was on the books of the Western department as a disbursement account. When the 11 per cent payment came in it was not put on his books. The only disbursements they made were the impoundings against the amount of impoundings to the custodian, and that disbursement, when it was made up, was the total amount of those impoundings (Cashel, I, 316). The 5 per cent was not charged on Mr. Cashel's books. There was nothing on his books (Cashel, I, 316). He had nothing whatever to do with it. No information was given him, and he had no knowledge of it. He did not even know that it had been paid out. When the case was settled the impoundings account was transferred to the home office and everything was handled there. If his memory is correct, they took it over from then on, along about the latter part of 1936 (Cashel, I, 316-317).

Mr. Luce knew that the 50 per cent had been returned to his company and they said the 30 per cent had been paid to the trustees. That was his information, and he assumed that the 11 per cent dividend came from the 30 per cent fund. That was the only money of his company that the trustees had up to that time; so he naturally assumed that that is where it came from (Luce, II, 525). Mr. Luce understood that they were getting back 11 per cent of their impounded funds and they were sending the $2,186.72 check to Mr. Street, and out of that 11 per cent Mr. Luce was returning 5 per cent to the person or one of the persons from whom he got the 11 per cent.

He assumed that it was for some legal expense in connection with being able to get their share of the impounded funds. They received bonds in the par value of $20,000.00, a premium thereon of $493.75, and the accrued interest of $281.81, and at the same time that was all accompanied by a check from the custodian for $867.00, a total of $21,723.24 and then they got the 11 per cent on top of that and sent back this 5 per cent, this $2,186.72 (Luce, II, 528).

Asked if he knew how this check was entered in the company's books, Mr. Luce said he thinks that the books show it was entered up as "legal expense, Missouri federal rate case." Mr. Luce did not particularly direct the accountant to enter the check on the books as it was entered. When Mr. Luce asked the accountant for the check, the accountant was somewhat familiar with Missouri and with Mr. Street's and Mr. Haid's name, and Mr. Luce just told the accountant it must be assumed that it was for legal expenses (Luce, II, 522). Counsel pointed out that the check designated Mr. Street as "agent," and asked whose agent he was. Mr. Luce said that using the term "agent" is purely an impersonal affair as he sees it, and they might have called him chairman or trustee. Mr. Luce did not have in mind what the word meant when he wrote the check—simply because they were asked to write it that way. He definitely intended for Mr. Street to handle those funds. It was his company's money.

"Q. And you were willing for him to distribute it for what you thought was legal expense?

A. I had that faith in him.

Q. To that extent he was acting as your agent, that is, you thought he was your agent?

A. He was our disburser" (Luce, II, 526).

One month after receiving a letter setting out the terms of the decree, which set out that 30 per cent went to the trustees *to pay the expenses of litigation,* the trustees asked for a 5 per cent check payable to Mr. Street which Mr. Luce thought was for that purpose. Yet it did not seem strange to Mr. Luce one iota, considering the absolute faith he had in the manner in which Mr. Street handled everything and trusted him. Mr. Luce had no definite information for what purpose the money was to be used, and his accountant did not have any information, so far as he knows, except what Mr. Luce told him. Mr. Luce did not give him that information. There was

nothing on his memorandum that would give him that information. When Mr. Luce asked Mr. Bixby for this check and Mr. Bixby gave it to him, he told Mr. Bixby it should or must be entered as Missouri litigation, Mr. Luce assuming that that was all it could be. That is why it went on the books that way (Luce, II, 523-524). The thing about Mr. Street's name as chairman of the committee that would cause Mr. Luce (or his accountant) to enter the 5 per cent contribution as legal expense was implicit faith in Mr. Street's handling of every matter all the years they had known him in the insurance business (Luce, II, 523). Mr. Street lived for almost two years after this check was drawn. He never did account to Mr. Luce's company for that money, and Mr. Luce never got any accounting. He never asked Mr. Street for an accounting (Luce, II, 524, 525, 526). No one in his company, so far as he knows, ever asked for it. He still had implicit faith that some day Mr. Street would account for it (Luce, II, 525). He never talked to Mr. Street about it (Luce, II, 526). He never discussed it in any meeting or with any person except what he has detailed (Luce, II, 526). Mr. House was Mr. Luce's superior officer, and all through this Missouri litigation, when items would appear in bulletins or in newspapers, Mr. Luce naturally talked to Mr. House. Mr. Bixby is a man 83 years old who has been retired a year and a half. Mr. Luce absolutely has no reason to believe that Mr. House knows any more or anything additional about this than he does. Mr. Luce handled it for his company in the office. Mr. House got his information from the newspapers, the bulletins and Mr. Luce. So far as Mr. Luce knows, Mr. House got no bulletins that he has not seen (Luce, II, 527). Mr. Fletcher is simply a chief accountant, and he just signs the checks so that they will have a verification (Luce, II, 527). He is what you might perhaps better call "cashier." He verifies checks and enters them up in the cash book and the verification to Mr. Bixby, the treasurer, or to Mr. Luce or to any other officer authorized to sign. It is just simply that safety that it agrees with the bill or whatever the item is and that it was so entered in the cash book. Mr. Bixby merely signed and issued this check as Mr. Luce directed him to. That is all Mr. Bixby knows (Luce, II, 527-528).

GROUP FORTY.

The companies of this group do not have a Western department, but their accounts are broken up into central regional areas, and they have a Midwest department manager in the office. The Missouri fire rate litigation was in the Midwest department (Long, III, 84-85).

Mr. Long does not know that the Actuarial Committee handled this litigation on behalf of his companies except in an advisory or administrative way. His companies leaned on the committee for counsel, but so far as the actual handling was concerned, that was a matter of legal control. It is true that the committee handled the directing of the activities. That was done by the Actuarial Committee with these companies' knowledge and consent, subject to reports from time to time which would enable them to keep proper check (Long, III, 85).

Mr. Whitman had not a single thing to do with the handling of any of the details of the Missouri fire rate litigation until March, 1936. He did not then know that the compromise had been made. He had no knowledge of the case. The first he knew of it was a call from Mr. Haid. No papers ever passed over his desk. He never read any of them. They were never referred to him by any other officer. He read about the case in the papers. He did not know, officially or unofficially, the terms of the compromise. He did not know that 20 per cent was to go to the policyholders or 30 per cent for expenses. He had never read that, even casually. His sole and only connection began when Mr. Haid called him over the telephone in March, 1936. Mr. Whitman thinks that Mr. Haid communicated with him because he has known Mr. Haid a great many years. Mr. Whitman was the senior officer in charge. The late Mr. Milligan was president and was on the coast with Mr. Long. Mr. Whitman thinks he only made a memorandum of the amount of the check which Mr. Haid asked for. He has not been able to locate that memorandum. Mr. Haid told Mr. Whitman that he (Whitman) would not know anything about the case, but that Mr. Whitman knew Mr. Haid and Mr. Street, which Mr. Whitman did, and that Mr. Milligan and Mr. Long would approve Mr. Haid's asking Mr. Whitman to send this check. Mr. Whitman does not remember Mr. Haid quoting any percentages (Whitman, III, 128-129). Mr. Haid did not tell Mr. Whitman it was 5 per cent of the impounded premiums (Whitman, III,

129). Mr. Haid told Mr. Whitman a check was coming. Mr. Whitman thinks he said that it was some $30,000.00 but does not remember. He knows the amount now. He has looked it up. Mr. Whitman did not know what it was. He did not know out of what fund it was. Mr. Haid said, "You will get a check for so much and I want you to send me a check for so much" (Whitman, III, 129). Mr. Whitman took a memorandum of the amount and gave it to the comptroller who drew the check. That is all Mr. Haid told Mr. Whitman. Mr. Haid said Mr. Whitman could depend on his word, that it would be all right for him to send Mr. Haid the check, and Mr. Whitman was satisfied it would. Those are all the details Mr. Haid told Mr. Whitman, and thereupon Mr. Whitman sent the check with no further knowledge concerning it (Whitman, III, 129).

When Mr. Long came home Mr. Whitman communicated with him and with Mr. Milligan verbally. Mr. Long did not ask Mr. Whitman what the check was for, nor anything in connection with it in any way. All Mr. Whitman told Mr. Long were the facts that Mr. Haid had told him—that it was all right for him to send the check and that it would meet the approval of Mr. Long and Mr. Milligan (Whitman, III, 129). Mr. Milligan ceased to be president at his death on April 30, 1937. He was surprisingly active, quite active during the last two years of his life in the management of the company; mentally fine, but not at his best physically. From May, 1935, until Mr. Milligan's death in 1937, Mr. Long had to assume quite a little more burden in the management of the company than he had done prior to 1935 (Long, III, 107-108).

Mr. Long thinks that the first time he ever met Mr. Street was in 1919, before Mr. Long had anything to do with the West. His acquaintance with Mr. Street ripened after he (Long) took charge of the West in 1926. Mr. Long was never an intimate friend of Mr. Street's; but by reason of his association with organization activities in the West, he came to know Mr. Street very well (Long, III, 108). Mr. Long never received any information from Mr. Street or from any other persons, prior to the breaking of the newspaper stories, about persons employed by Mr. Street as attorneys (Long, III, 96). Mr. Long knew that Hicks & Folonie throughout the whole litigation had handled it up to that date. When he received the telegram (Exhibit 267, III, 98) from Mr. Street

stating the compromise and the amount to go to Street and Folonie as trustees, he does not think he knew that Mr. Folonie was participating in the settlement. That is all he knew, and the first advice he had had that Mr. Folonie was to be with Mr. Street as a trustee. Mr. Long never has inquired about what other attorneys might have helped to negotiate the transaction. He knows of no definite information coming anywhere to the insurance world that indicated that Mr. Street had, at any time, employed any other attorneys. He has never received any communication along that line, one way or the other (Long, III, 96-97). He never knew who his company's attorneys were other than Hicks & Folonie. He would not have been able to identify new attorneys. He knew that under the compromise, 30 per cent of the impounded premiums had been set apart for the payment of litigation expenses (Long, III, 105). Apparently Street & Folonie, trustees, did not commence to function to distribute the 30 per cent until about February, 1936. Mr. Long is quite vague in regard to the details (Long, III, 107). He made no effort to have the trustees repay out of the 30 per cent the $6,500.00 advanced to Mr. Street in 1935. In a general way Mr. Long knew that the funds were set apart specifically for that purpose. As to whether there was any reason why the trustees should have reimbursed them for the $6,500.00 is something that Mr. Long knows nothing about. That thought never occurred to him. So far as he knows, no person in his companies' office made any inquiry as to why they did not get their $6,500.00 back out of the 30 per cent. They never made any effort to get back the $6,500.00 because they were quite content to await a final settlement of the case and the return in full of such impoundings as might belong to them (Long, III, 106).

Mr. Long saw Mr. Street after May 16, 1935, but not very many times. They were delighted to get the case out of the way. Mr. Long never discussed the case with Mr. Street afterward. He would not say he had no curiosity as to who had gotten the $100,000.00 and had helped Mr. Street make the compromise, but he had no feeling of doubt or suspicion toward Mr. Street's employment of counsel that would have induced him to ask Mr. Street. Mr. Long had not the slightest curiosity. He had lost all curiosity in connection with the Missouri litigation, marked it off. He knew that Street and Folonie continued to act as trustees under

the decree which was in 1936. The decree was entered and then the custodian "made" and in this compromise the trustees were named to pay certain expenses. Mr. Long presumes that the trustees reported thereafter to whom they had paid money as attorneys for the company. He does not know (Long, III, 105).

Eventually Mr. Long's company got 11 per cent returned out of the 30 per cent fund. Mr. Long did not receive it when it came into the office. It was brought to his attention after he returned to the office, and it was also brought to his attention that his companies were called upon to advance additional attorneys' fees in the sum of 5 per cent, less their original down payment. Nothing that Mr. Long recalls was said by him or the person to whom he talked at the time it was brought to his attention about that being an unusual way to handle the trust fund (Long, III, 106). It aroused his passing interest, but he does not know that he would call it curiosity. It so happened that he was pretty much engaged at that time, and this was merely an incident of the day, so to speak. His former president was rapidly fading away and Mr. Long found a good many new responsibilities on his shoulders and in his mind, and he had pretty well marked off Missouri and Missouri litigation; so perhaps he gave rather casual consideration to this thing; but he did not note the fact that it was an unusual situation; it was not an every day matter (Long, III, 106-107). That money in the hands of the trustees would come to his company, and that they would then be required to pay back a part of that money to Mr. Street as agent, was something that Mr. Long was quite willing to leave up to Mr. Street; but he did note it and made no inquiry about it outside of the office. He did in the office merely in discussion with the executive in charge during his absence (Long, III, 107). In point of amount, it represented a total expenditure of about $15,000.00 (Long, III, 107).

The officers of this group of companies, so far as Mr. Long knows, did not know or have any reason to believe or any consciousness that Mr. Street was using any of this money that they contributed or that any of the other companies contributed for the purpose of bribing anybody or for that purpose of paying anybody to consent or help to get through the compromise of May, 1935, or the court decree of February 1, 1936 (Long, III, 108). Nothing whatever happened in 1935, 1936 or 1937

that excited the slightest suspicion in Mr. Long's mind that any money had been used by Mr. Street toward paying Mr. Pendergast, Mr. O'Malley, Mr. McCormack, or anybody whatever except legitimate expenses to their regular known attorneys (Long, III, 108).

GROUP FORTY-ONE.

Mr. Robert C. Weigel was secretary and comptroller of the Rhode Island Insurance Company in 1935 (Weigel, III, 1). The Guaranty Fire Insurance Company was merged with the Merchants Insurance Company in 1932. As an official of the Merchants Insurance Company, Mr. Weigel in 1935 and 1936 automatically had to do with the affairs of the Guaranty Fire Insurance Company. He was familiar with the Missouri rate litigation which began about 1930 (Weigel, III, 1). He knew that the litigation on behalf of his company and other companies was being handled by Mr. Street as chairman of the "Subscribers Actuarial Bureau" and he made no objection to that (Weigel, III, 1). So far as Mr. Weigel knows, nobody in the Rhode Island Company ever asked Mr. Street at any time to do anything for them in connection with the Missouri rate litigation (Weigel, III, 13-14). Absolutely no one in his company that Mr. Weigel knows of ever attended any meeting in New York, Hartford, or any other place at which this Missouri litigation was discussed (Weigel, III, 13). Sometime in the latter part of 1935 Mr. Weigel heard that the rate litigation had been settled or that a settlement agreement had been entered into. In February, 1936, he received a letter from the Subscribers Actuarial Committee advising of the approval of this settlement by the federal court. That letter set out the terms of the settlement; therefore Mr. Weigel is familiar with those terms (Weigel, III, 1). Briefly, the terms were that the companies would immediately receive 50 per cent, the policyholders would immediately receive 20 per cent, and 30 per cent would be turned over to Mr. Street and Mr. Folonie as trustees out of which to pay all expenses in connection with the litigation. This company never had any indication of how great those expenses might be, but Mr. Weigel understood that that 30 per cent in no event would go to the policyholders, and if it were not used for expenses this company expected it to come back to the company. The settlement had previously been referred to as the 80-20 settlement, meaning that 80 per

cent was to go to the company (Weigel, III, 1-2). When he learned of this settlement Mr. Weigel made no objection to it on behalf of his company. He was very glad to have it settled (Weigel, III, 2).

At the time the 5 per cent was paid, Mr. Byron S. Watson was the president of this company. He turned all of those matters connected with the Missouri litigation over to Mr. Weigel (Weigel, III, 13). A telephone call came in the afternoon to the attention of Mr. J. B. White, vice-president (Weigel, III, 2). The telephone call, instead of being addressed to Mr. Watson, was addressed to Mr. White, the executive vice-president, and he in turn transferred the telephone call to Mr. Weigel, because Mr. Weigel was handling the Missouri impounded refund account (Weigel, III, 13) and he happened to be the disbursing officer of his companies. That telephone call was, in turn, turned over to him (Weigel, III, 2). That happens to be his particular activity in the company. Mr. White's lack of knowledge regarding the matter caused him to refer it to Mr. Weigel. He just told the switchboard operator to transfer the call to Mr. Weigel's phone (Weigel, III, 13). Mr. Erskine, in Mr. Haid's office, was on the other end. He asked them to send a check representing 5 per cent of the refunded amounts payable to C. R. Street, agent, and forward it on to the Insurance Executives' Association which they did. At the time they inquired as to the reason for the check. They were told it was to expedite the forwarding of the refund check to them representing the 11 per cent refund that they anticipated receiving, and they were told that this represented the expenses, which were referred to as legal expenses at the time. Mr. Weigel added, "I wouldn't swear to that," but they were told that that was to expedite the forwarding of the 11 per cent dividend checks (Weigel, III, 2-3). The 11 per cent check was received the same day that the 5 per cent check was issued. The 11 per cent check had no doubt been prepared and signed by the trustees before Mr. Weigel was ever contacted. His company took about 48 hours to draw that check. They got no impression that the 11 per cent would not be paid unless their company paid the 5 per cent; the only reason this company's check did not proceed the date that they received their check was because this company's office did not work fast enough to get it out on the same day that they got the telephone call. They told Mr. Erskine they would send the check, but did not say the same day,

and they were not asked to send it the same day. They were simply asked to send it, which they did, but they happened to receive their check the same day that they sent one (Weigel, III, 3).

Defendant's Exhibit 243 (III, 6) is as follows:

"For: Mr. J. B. White:

	11% payment on Impounded premiums		Impounded Premiums as of May 1, 1935		5% of impounded Premiums
Rhode Island Ins. Co.	$5,825.77		$52,961.55		
Guaranty Fire Ins. Co.	638.76	6,464.53	5,806.88	58,768.43	2,938.42

Two checks herewith. Please send *here* one check for $2,938.42 payable to *C. R. Street, Agent.*"

Exhibit 243 is a memorandum that was attached to the 11 per cent check indicating the makeup of that particular check, and is a request that they send one check payable to C. R. Street, Agent, for $2,938.42. That memorandum accompanied the checks from Mr. Haid's office. It was not prepared in Mr. Weigel's office (Weigel, III, 11). The memorandum was directed to Jesse B. White, because Mr. Watson was away from the office on a business trip (Weigel, III, 13).

Defendant's Exhibit 244 (III, 7) is a letter from the secretary to C. R. Street, Agent, dated March 26, 1936, "Attention Mr. Erskine." It is as follows:

> "We wish to acknowledge receipt of your checks in payment of 11% of impounded premiums of the Rhode Island in the amount of $5,825.77 and of the Guaranty Fire in the amount of $638.76. As requested, we are attaching Rhode Island check in the amount of $2,938.42 payable to C. R. Street, which represents 5% of the impounded premiums for the Rhode Island and the Guaranty Fire."

Defendant's Exhibit 245 (III, 8) is a letter from the secretary to C. R. Street, Agent, dated March 26, 1936. It is as follows:

> "We received today a payment of 11% of the Missouri impounded Premiums for the Rhode Island Company and for the Guaranty Fire Insurance Company. No payment was made to the Merchants Insurance Company of Providence and on the same basis as the payment to the Rhode Island and the Guaranty

there would be due the Merchants $2,223.98. Kindly advise us when we may expect to receive this settlement."

Defendant's Exhibit 246 (III, 9) is a letter to Mr. Weigel, secretary, signed by C. R. Street and dated March 28, 1936. It is as follows:

"Your letter of the 26th, addressed to me in care of the Insurance Executives Association—

Check for the Merchants was drawn at the same time as those for the Rhode Island and Guaranty, but it just so happens there were three companies on the list by the name of 'Merchants' and all three were laid aside with the intention of checking up a little further to see which one was which.

Since you say $2,223.98 is what is due you, it is easy to see who should have check No. 215 for that amount, and it is herewith inclosed.

You can send me your check either here or care of the Executives Association, your check on the same basis as you have paid for the Rhode Island."

Defendant's Exhibit 247 (III, 10) is a letter to C. R. Street, Agent, from the collection manager, dated March 31, 1936. It is as follows:

"We acknowledge receipt of check for $2,223.98 in payment of 11% of the Missouri Refunds of the first Bracket. Our check in the amount of $1,010.90, payable to Mr. C. R. Street, Agent, is attached, which represents 5% of the net premiums."

At the time this 11 per cent check came, they received no check for the Merchants and they wrote to Mr. Street. The letter of March 26 (Exhibit 245), and Mr. Street, in his letter (Exhibit 246), explained the delay and sent the check there on March 31. The agent of the Merchants, connected with this group of companies, sent Mr. Street the 5 per cent check for that company (Weigel, III, 11). Mr. Weigel's understanding was that the money requested by Mr. Erskine was being collected for legal expenses connected with the distribution of that portion of the 30 per cent which was being returned to the companies, that is, legal expenses in connection with that litigation, all part of the general expense (Weigel, III, 11). It did not seem at all unusual or strange to Mr.

Weigel that they would give him a dividend out of this money and then ask for a check back to Mr. Street as agent, rather than as trustee. Mr. Street was chairman of the Subscribers Actuarial Committee, and there was no reason in the world why they should question his word. His reputation was very good, highly satisfactory. The entire litigation was rather involved and complicated and at times rather confusing (Weigel, III, 11-12). This company understood in February, 1936, that Mr. Street and Mr. Folonie as trustees had the right to pay these expenses out of the 30 per cent; but Mr. Weigel rather doubts that they stopped to consider it that far. It was not usual that they wanted to get this money out of their account as trustee and over into another account so they would not have to account for the use of it; but that unusualness did not occur to Mr. Weigel. At that time, the transaction did not seem at all unusual to him. In the light of the testimony he has heard today he would say it would seem unusual (Weigel, III, 11-12). It was absolutely Mr. Weigel's custom, when paying out money, to find out definitely what the payment is for. He was asked if he was satisfied with the mere statement that the money was for legal expense, and he said he would not put it that way. They were never satisfied that the entire accounting had been completed, and are not satisfied today that it has been entirely completed (Weigel, III, 12). "We never considered Mr. Street as any particular representative of ours. We considered the Subscribers Actuarial Committee as our representative. * * * We never questioned Mr. Street.

Q. And you never questioned the Subscribers Actuarial Bureau or Committee did you?

A. Not in connection with that 5 per cent check" (Weigel, III, 12).

They hoped some day to get an accounting which would explain to them in detail what the total expenditures were in connection with the 30 per cent refund and what their prorata proportion of it was (Weigel, III, 13).

Neither Mr. Weigel nor any other officer of his company, so far as he knows, ever authorized Mr. Street to pay or knew that Mr. Street may have paid any money for bribery, or any money to induce anybody else, either official or otherwise, to agree to this compromise settlement of May, 1935, and February 1, 1936 (Weigel, III, 14).

GROUP FORTY-TWO.

The Royal Exchange Assurance is the parent company and owns the State Assurance Company and the Provident Fire Insurance Company. The United States manager and assistant managers act for the foreign companies, "World" Exchange Assurance Company and the State Exchange, Ltd., and also serve as President and Vice-President of the Provident Fire Insurance Company. They are under common management (Koenig, II, 68). These companies are managed in the same office (Halprin, II, 99).

During the years 1935 and 1936 Mr. Elwell was familiar with the federal court rate litigation in Missouri in a general way. On the part of these companies Mr. Waller, the United States manager, decided matters of policy and things of that nature in connection with the litigation. He was pensioned the thirty-first day of December, 1937, and is retired and living in New Jersey (Elwell, III, 416). This company is a subscriber, or member of the Subscribers Actuarial Committee, and of the Missouri Inspection Bureau (Elwell, III, 417).

In 1935 Hicks and Folonie and the Subscribers Actuarial Committee had charge of this litigation on behalf of all the companies. The committee had control of it and Hicks and Folonie were the attorneys. The committee was the insurance group that had charge of it. Mr. Elwell did not know, but assumed that Mr. Street was chairman of that committee. He knew Mr. Street was in it and that he was very active in connection with the litigation (Elwell, III, 416). Mr. Street never directly consulted this company as to whether the settlement should be made. These companies just went along with the other companies. They all appeared to have agreed with it, and these companies gave their assent (Elwell, III, 420). Mr. Koenig thinks that most of the material (concerning handling the litigation for the companies) came to them through the Subscribers Actuarial Committee of Chicago. He had the impression that it had active charge of the litigation (Koenig, II, 69).

The litigation always seemed to be in a state where there was a proposed settlement in the offing, but Mr. Elwell did not hear anything definite until, he supposes, in 1936. He thinks he saw a letter in June, 1935, sent out by the Subscribers Actuarial Committee stating that a settlement agreement had been entered into and giving

the general terms thereof. At any rate, he became familiar with the general terms of the settlement along about that time. He saw the letter in February, 1936, from the Missouri Inspection Bureau stating that a decree of court had been entered, approving the settlement, or he got that information (Elwell, III, 417).

In a general way Mr. Koenig was familiar with the general nature of the Missouri rate litigation (Koenig, II, 68). This company received notice of the compromise agreement made in May, 1935. Mr. Koenig believes it came to them through the Subscribers Actuarial Committee in the nature of a written communication. He learned, through that, the terms of the settlement: 20 per cent to the policyholders, 50 per cent outright to the companies, and 30 per cent placed in the hands of Messrs. Folonie and Street, as trustees. He has not the document here, but his recollection is that the purpose is for litigation expenses, all kinds of expenses, court costs, attorneys' fees. His impression is that it was for all expenses incurred in connection with the suit, whatever they were (Koenig, II, 69). He further understood that if there was any over-plus in this 30 per cent it would, at some time, come to the companies after payment of expenses. He knew about the rendition of the federal decree (Koenig, II, 69). Mr. Koenig has no definite information but he doubts very much whether his company received a dividend from the 30 per cent fund (Koenig, II, 69). He doubts that, from memory, but he has three letters from Mr. Street dated December 27, 1937, one for each of his companies, which read, "Enclosed check or checks will pay 5% of your Missouri Impounded Premiums as of May 1, 1935. It is a part of the expense fund held by Street and Folonie as trustees" (Koenig, II, 70). These companies received funds returning specific payments they made in March, 1936. Mr. Koenig has no records that will refresh his recollection, but recalls that the Royal Exchange received about $50,000.00 Home Owners' Loan Bonds and a certain cash settlement from the custodian, and the other companies, the State Assurance Company and Provident Fire Insurance Company, received cash payments from the custodian (Koenig, II, 69-70). Mr. Elwell supposes that they had notice from the Subscribers Actuarial Committee that such a settlement was contemplated and the terms thereof. He cannot imagine that they did not, but he has not checked the

fact. His recollection does not go back far enough to know personally (Elwell, III, 420).

Mr. Elwell first learned of the New York meeting on May 2, 1935, four weeks ago, in England. He read it in the Journal of Commerce. He attended no meeting of insurance executives in New York or in any other place on or about March, 1936, concerning the expenses of this settlement and the litigation. He attended one meeting of insurance executives or others interested in the insurance business in June, 1939, in which the Missouri rate litigation and the proposed settlement of expenses following the settlement were discussed. That was a meeting to formulate plans of proceeding from then on. That was the only such meeting he attended (Elwell, III, 417-418).

Mr. Haid's assistant, Mr. Erskine, came in the office to see Mr. Elwell one day when Mr. Waller was away and requested a check needed to pay litigation expenses in connection with a Missouri settlement. Mr. Elwell asked Mr. Erskine why he came instead of someone else, and Mr. Erskine said he was handling the matter on behalf of Mr. Haid and Mr. Street, collecting funds from all the companies, and that this was their proportion. Owing to the reputation that Mr. Street, Mr. Haid and Mr. Erskine had in the business, they therefore gave them the check for their proportion (Elwell, III, 418).

The check was given as a contribution toward litigation expenses (Elwell, III, 418). Mr. Elwell understood that there were a great many general expenses of one sort and another that had to be paid, but did not understand that this was for any specific item. He had not been in this country very long; and while he was familiar with the existence of the Missouri rate suit, the great number of the actuarial and other committees were a complete bewilderment to him at that time. He does not think he could have told at that time that the Subscribers Actuarial Bureau or the Missouri Inspection Bureau or the Western Underwriters Association, the National Board of Fire Underwriters or the Insurance Executives Committee was responsible for collecting money for the Missouri expense. He could not have told offhand who did it (Elwell, III, 418).

He had no reason to make any effort at that time to find out how those things had been paid in the past. There was nothing that appeared suspicious or peculiar about it. He did not feel it his duty to find out whether

he was taking a proper action or not, in view of the fact that he knew Mr. Street was handling the litigation right through and that it was going to the natural person on any call. He assumed Mr. Street was the natural person. Mr. Street had been handling the litigation right through, and it seemed at that time that he was the natural person (Elwell, III, 419). It did not strike Mr. Elwell as unusual that they would be collecting money outside of the 30 per cent of impounded premiums to be turned over to the trustees to pay expenses of this litigation. It is quite obvious that a percentage cannot be an actual amount, and there might be an amount short that had to be made up. It was not necessary to make any inquiry about that, and he made no inquiry (Elwell, III, 419).

At the time he came, Mr. Erskine did not pay Mr. Elwell any money or speak of any that this company had coming from the trustees, except the normal liquidation amounts, so far as Mr. Elwell can recollect. He does not recall any percentage, or that it was 11 per cent of the impounded premiums. So far as he remembers, Mr. Erskine did not bring along a check. He believes his company received a check about that time, but is not sure (Elwell, III, 419). Mr. Elwell understood that this payment was their contribution to a general levy made on all the companies in accord with the policy agreed upon by the larger companies. This is all he knew about it, and with that information he directed the check to be issued (Elwell, III, 420).

In March, 1936, Mr. Halprin issued the Royal Exchange Assurance check to Mr. C. R. Street for their three companies (Halprin, II, 93). He countersigned the Royal Exchange check (Exhibit 154) for the branch secretary. It represents 5 per cent of the impounded premiums for the group in the Missouri rate litigation. The assistant manager, E. E. Elwell, directed Mr. Halprin to issue the check (Halprin, II, 95; Koenig, II, 70).

Mr. Halprin made the requisition. The requisition just says "Pay to C. R. Street," and the amount (Halprin, II, 95). It is all done by one bookkeeping operation. It is one check and broken down (Halprin, II, 99). The purpose for which the check is issued is not on the requisition. It is not customary to put it on there. They just say "as per statement" or something like that, and attach the statement to the check. When they issue a check that does not have any statement, they do not write

it on the requisition. They make an entry in the cash book; so that is practically the entry (Halprin, II, 95). Mr. Halprin did not know what it was for (Halprin, II, 96, 97, 98). At the time he made this entry he thought he would get information from Mr. Elwell as to what it was for (Halprin, II, 98). He asked Mr. Elwell; Mr. Elwell was his superior officer (after all, Mr. Halprin had full authority) (Halprin, II, 97). Mr. Elwell told Mr. Halprin nothing (Halprin, II, 96). He did not say anything (Halprin, II, 95, 96). He just said it was in connection with the Missouri impounded premiums (Halprin, II, 95). After Mr. Halprin issued the check he went to Mr. Elwell to find out what it was about, and said "What is this for?" Mr. Elwell said he did not know, and something like, he would let him know (Halprin, II, 96-97), that he would tell him later (Halprin, II, 97, 98). This is all the information Mr. Elwell gave Mr. Halprin (Halprin, II, 97). Mr. Halprin never learned the purpose of the check, but he knew how it was arrived at (Halprin, II, 96). Mr. Elwell never did tell Mr. Halprin, and Mr. Halprin never went back to him. To this date Mr. Halprin does not know what it is for. He never knew either through Mr. Elwell or any other person (Halprin, II, 98). Mr. Halprin recalls that Mr. Koenig, the secretary, came back from Florida shortly after the issuance of the check and asked Mr. Halprin about it (Halprin, II, 96, 99). Mr. Koenig did not know what it was for. Mr. Halprin asked Mr. Koenig, who said he did not know. When Mr. Koenig asked Mr. Halprin what the check was for, Mr. Halprin said he did not know (Halprin, II, 96). All Mr. Halprin knows is that he was asked by Mr. Elwell to pay this (Halprin, II, 100). Mr. Halprin probably mentioned to Mr. Koenig that Mr. Elwell had told him he would let him know later or words to that effect, but that is all. Mr. Koenig seemed to be satisfied. Mr. Koenig made a little entry on the sheet, and "that was that." Mr. Halprin does not know whether Mr. Koenig went to Mr. Elwell (Halprin, II, 99). Mr. Koenig merely received information that within two days of the issuance, the assistant was in doubt at the time and said assistant was told it was legal expenses. Mr. Koenig does not know who told his assistant that, and does not know who made the call for the check. At the time the payment was made Mr. Koenig was in Florida and his assistant was asked to countersign this check. Mr. Koenig learned that from his assistant. The com-

pany covers three floors and the assistant would not know who asked for the check. Mr. Koenig talked with his assistant after coming back and all the information he got about the matter was that it was to be prorated to legal expense and the basis was the impounded premiums to April 30, 1935. The assistant did not tell Mr. Koenig from whom he received the call for the check. It seems from the record that some doubt existed about the matter for two days because the instruction then must have been to charge legal expenses. Mr. Koenig handled it in that manner. When he says "doubt for two days" he means, as far as office routine is concerned, not for two days after he returned from Florida. It was held in the office for two days because no one knew how to allocate it. The check had been issued, drawn to C. R. Street. Mr. Koenig's impression is that a messenger received it or some representative unknown to him. He got that information that a messenger came for it because naturally, of course, they had discussions when he returned (Koenig, II, 71-72). The discussions were simply that there was a check drawn in this Missouri litigation and they had not been able to apply it until they made inquiry. Mr. Koenig's assistant would have been told that it was for legal expenses because "legal expenses" in the memorandum is in his own handwriting (Koenig, II, 72). Mr. Koenig's assistant told Mr. Koenig that he had not known for two days how to handle the matter. He had to make an entry, but left space for a description. He entered the amount, the date, and the fact that the check was issued, and to whom, but did not make an entry of what it was for (Koenig, II, 72). The information that it was for legal expenses must have come from Mr. Elwell, but Mr. Koenig does not know anything about it positively. Mr. Elwell, the United States Manager now, was assistant manager at the time and was the one who handled it so far as Mr. Koenig knows (Koenig, II, 72-73). At the time, but after the issuance of the check, Mr. Halprin made a full and complete entry (Halprin, II, 96). He made an entry on his book (Halprin, II, 97). He set it up as legal expenses. He did not make the entry personally, but caused it to be made. He did not know it was legal expenses. He had been so curious that he had asked, but had gotten no information, yet he set it up as legal expenses (Halprin, II, 97). Knowing the setup of the figures, he was able to dope out what it represented; namely, 5 per cent of the premiums. He set it up as legal ex-

penses. In the insurance business it could not be anything else (Halprin, II, 97). Asked why he did not wait until he got the information, he said that he did not have to wait, because he could set it up himself. At the time he went to Mr. Elwell he thought he needed the information. Then Mr. Halprin took it upon himself to set it up (Halprin, II, 98).

Defendant's Exhibit No. 155 (II, 98) is a page from the records of Royal Exchange Assurance entitled "Disbursements" which among other entries shows on March 25, 1936, "C. R. Street, Legal Expense *Re* Mo. Rate Litigation" showing payment of check (Defendant's Exhibit No. D, 154) as divided between Royal Exchange Assurance, Provident Fire Insurance Company and State Assurance Company, Ltd., in amount $6,385.31.

The entry reads "C. R. Street, Legal Expense." "R. Mo." means rate litigation. Then it is broken down for the companies (Halprin, II, 98).

Witness did not make the book entry personally (Halprin, II, 97). Mr. Elwell called for the check by telephone. They are on a different floor. Mr. Elwell did not tell Mr. Halprin to whom he had talked (Halprin, II, 99). At the time the checks were sent to Mr. Street for the 5 per cent they were contemporaneously entered on the records for the different companies of this group for legal services or legal expenses (Halprin, II, 99).

Mr. Street acknowledged receipt of the check for $6,385.31 in a letter dated March 31, 1936 (Halprin, II, 99).

Defendant's Exhibit 146 (II, 74) is a letter addressed to Royal Exchange Assurance, dated March 31, 1936, signed "C. R. Street, agent." It is as follows:

> "I acknowledge the receipt of your check for $6,385.31, account Missouri litigation expense."

Shortly prior to the letter (Exhibit 146) Mr. Koenig had sent Mr. Street a check (Koenig, II, 70).

Mr. Halprin does not know Mr. Pendergast, Mr. O'Malley or Mr. McCormack. He never had any communication with them by telephone, telegram, letter or personal contact (Halprin, II, 100).

GROUP FORTY-THREE.

There are several companies in this group that are not interested in this litigation (Warner, III, 351).

(Note: only those of the group which have cases in this court are listed in the group. See "II. Insurance Groups.") This group's offices are at 150 William Street (Warner, III, 351).

Mr. Warner did not give the 5 per cent to Mr. Street when he asked for it at the meeting. He did not know what the amount would be. He received a note from Mr. Haid's office giving the actual figures one to three days after that (Warner, III, 363). Mr. Warner thinks the check (Exhibit 325) was written within two or three days after the 1936 meeting (Warner, III, 366) as soon as or within the hour after they got the memorandum of the amount (Warner, III, 363). He thinks he sent it over by messenger (Warner, III, 363, 366). He sent down to the cash department to have it drawn (Warner, III, 363)—just sent it out to his secretary to see that it got over. There was no letter of transmittal. The check went back in answer to the memorandum which said, "Just as soon as possible." There was no explanation called for (Warner, III, 366). Mr. Warner cannot tell who brought him the note. It was put on his desk by his secretary. He thinks it was brought by messenger, but he knows nothing about it (Warner, III, 363-364. The check was made to C. R. Street, agent (Warner, III, 367). Mr. Warner did not notify anyone in his office of what had transpired before he got the Haid memorandum. He did not know the figures. He knows no one who made any memorandum at the meeting (Warner, III, 364).

Defendant's Exhibit 107 (I, 483) is a handwritten memorandum on a small piece of paper as follows:

"*Dear Mr. Warner*:

Amount desired	22,200.40
Previous payment	10,000.00
Balance	$12,200.40

Check to *C. R. Street, Agent* to be sent here as soon as possible.

P. L. H."

At the time Mr. Cartlidge issued the check to C. R. Street, Agent, he had no information as to what it was for, and did not know. So far as he knows Mr. Warner did not know. Simply and solely on this memo-

randum of Paul L. Haid, Mr. Cartlidge sent C. R. Street, Agent, $12,200.40 (Cartlidge, I, 484).

Mr. Cartlidge was asked "Whose agent was C. R. Street when you wrote that check; what did you make him your agent for?" He answered that the ramifications of the Missouri situation were so great that very little attention was paid to the question of the chairman and the agent. He had no thought on the matter as to whose agent Mr. Street was. Mr. Cartlidge never raised the question "In our minds or elsewhere" as for whom Mr. Street was acting as agent. He had no information or idea. In using the term, "agent," they had the belief that Mr. Street was representing "the companies, the Subscribers Actuarial Committee."

"Q. You named him as agent for the purpose of disbursing $12,200.40 to whom?

A. I don't know.

Q. You didn't know? Did you know for what purpose?

A. No" (Cartlidge, I, 484).

These companies received a dividend of 11 per cent from this 30 per cent fund (Cartlidge, I, 478).

When the check was made to C. R. Street, Agent, they just followed the instructions on the paper that they got from Mr. Haid. Mr. Warner gave no thought to what "agent" stood for. It was just automatic. When he signed the second check he did not realize that the first one was to "chairman;" otherwise he might have raised the point why one was one way and one the other (Warner, III, 367).

Mr. Warner knew that the litigation was in charge of the Subscribers Actuarial Committee which had general charge and supervision of that litigation with the knowledge and consent of the head executive of the Royal group (Warner, III, 351). "We recognized Hicks and Folonie and Street as the negotiating people and those in charge of the entire Missouri complicated situation" (Cartlidge, I, 470).

Defendant's Exhibit 108 (I, 487) is the requisition of the Royal Insurance Company for a check. It is dated March 23, 1936, directs a check to be drawn to the order of C. R. Street, Agent, for $12,200.40 in settlement of "Expenses *re* Missouri rate litigation." Under the printed words "Charge to" appears the written words,

"Legal Expenses," which two words are crossed out, and above them appears the written word "Suspense."

The check for $12,200.40 was ordered after collaboration between Mr. Cartlidge and Mr. Warner. The words "Legal Expenses" have been stricken out (I, 488). It was later journalized from "legal expense" to "suspense." It was originally charged to legal expenses and subsequently transferred to suspense by a journal entry of later date (Cartlidge, I, 488, 489). It was done substantially subsequent to the transaction. It was changed because of their understanding that both of these disbursements would be eventually reimbursed to them. Mr. Cartlidge cannot remember what came up, other than just a question of discussion between Mr. Warner and the chief accountant and Mr. Cartlidge, and they had understood right along that reimbursement was going to be made.

"Q. That hadn't been clear to the auditor up to that time?

A. Yes, it was purely a technical and inconsequential matter * * * nothing that specifically prompted it, except our understanding" (Cartlidge, I, 488-489).

Mr. Warner cannot explain why the words "Legal expense" were stricken out and "suspense" written and it was placed in suspense, except that the other item probably had been transferred to suspense and when they found it they probably decided to put it back. It was later transferred back in December before the end of the year; and when they got the check in December, 1937, for the same amount, they thought that was the payment back and that was credited to legal expense which adjusted the whole matter (Warner, III, 366). The check in December, 1937, came from Street and Folonie. It was carried to 1936 as a suspense item for which Mr. Warner has no explanation, because the whole thing was in a state of flux. Mr. Warner imagined it was all in flux, and in December, to get it into the right account the accountant who has authority to do things put it in the legal expense. He did not know it had been placed in the suspense account and he never gave any information to the accountant that caused it to be placed there. He never discussed the matter after that with anybody within his recollection (Warner, III, 366-367). They did not know whether it was legal expense or what, and had no information. When they went to make a requisition

for bookkeeping purposes they called it legal expense, originally. The reason was assumption that Mr. Street was engaged in legal activities. Mr. Cartlidge does not think it was the case that he had information back in 1936 that the legal fees had been taken care of. He thinks the case is that a large sum of funds was obviously still in the hands of the trustees for disbursement, as they understood, for these various expenses that have been mentioned, and that here was 11 per cent disbursed to the companies, 5 per cent to go back. Obviously the assumption was that it was simply handling of funds in the interest of the trustees, although it was made to an individual as chairman of the Subscribers' Committee, who had been in this sort of thing for a long time and it seemed there was nothing about the whole thing to occasion any inquiry or anything of that sort (Cartlidge, I, 484-485). Mr. Cartlidge did not know it was legal fees. He had nothing verbally or in writing to that effect. He knew that 30 per cent had been allocated out of these $9,000,000.00 of funds for the payment of attorneys' fees.

Q. Wasn't it a fair and honest assumption that it was not attorneys' fees?

A. I suppose that might be an assumption, but it never occurred to us.

Q. As a matter of fact, you knew in your own mind, that it was not attorneys' fees.

A. That is false.

Witness never did try to find out what it was for (Cartlidge, I, 485-486). After they issued the check they received no specific information that it was for legal expenses. They received an impression only. Nothing transpired after the issuance of the check that Mr. Cartlidge can recall; so he had no information since he issued the check as to what it was for (Cartlidge, I, 489-490).

Mr. Warner thinks that the handwriting "C. R. Street, expenses, insurance rate litigation $12,200" and some odd dollars (in Exhibit 108) is the accountant's; it is not Mr. Warner's (Warner, III, 359). Mr. Cartlidge thinks he recognizes the handwriting of Defendant's Exhibit 107 as that of Paul L. Haid. He is sure that they received this memorandum when they received their check for 11 per cent. It came to Mr. Cartlidge by messenger. Mr. Cartlidge received information from Paul L. Haid

that they were to remit back a 5 per cent check to C. R. Street, and is sure that this memorandum came with the 11 per cent check. Mr. Cartlidge thinks that prior to that there was a telephone conversation with Mr. Warner saying "I am sending over a memorandum which you will understand." He thinks there was a telephone call from someone in this office (Insurance Executives Association) that went direct to Mr. Warner who came to Mr. Cartlidge's home and said "We are sending you a memorandum over with checks and here is what I want." Mr. Cartlidge and Mr. Warner conferred about the matter. Of course, other than this possible single telephone conversation, they were together at the only times when the subject was discussed; so the conference was only in connection with this telephone conversation you might say. That is all the information Mr. Cartlidge had, and he issued a check at that time to C. R. Street, agent, for $12,200.40 (Cartlidge, I, 481-482). Mr. Warner does not remember going to Mr. Cartlidge's home. Mr. Warner has been to his home many times, because they both live in Forest Hills; but he does not remember discussing any business with him at all (Warner, III, 372).

Defendant's Exhibit 106 (I, 480) is a piece of paper with a strip pasted thereon containing typewritten words and figures. Above this slip are the handwritten words "Cash Received per H & F." Below the typewritten slip are the written words, "Payment to CRS per PLH." On the left side of the typewritten slip between the column of names and first column of figures are added the written words "11% of the Imp. to May 1." On the right side of the slip containing the typewriting to the right of the second column of figures appear the written words "Cash Impoundings to May 1, 1935." Above the figure 22,200.40 is written 5%. The typewritten matter is as follows:

Royal Insurance Company, Ltd.	10,779.72		97,997.48	
Federal Union	1,416.39		12,876.29	
L. & L. & G.	19,023.87		172,944.26	
Newark Fire	3,137.38		28,521.63	
Queen	11,323.14		102,937.62	
Star	3,160.40		28,730.90	
		48,840.90		444,008.18 - - 22,200.40

The writing on Defendant's Exhibit 106 is "Cash impoundings to May 1, 1935, 5%. "CRS per PLH" written by the assistant chief accountant, indicate payment to

CRS per P. L. Haid. The payment was less the refunding of the $10,000.00. It is problematical what is meant by the written words "Cash Received per H. & F." Mr. Cartlidge cannot tell whether those checks were from Hicks and Folonie or from Street, or who may have signed them, or on what account they were drawn. That is probably the assistant chief accountant's note. The figure $22,200.40 is 5 per cent of the impounded premiums. They received a check for 11 per cent which was $48,840.90 (Cartlidge, I, 479).

When Mr. Warner came to America, the Missouri litigation was still history. He did not come until 1926, and as he began to learn about it he found that they had never taken credit for any of the premiums that were being held back in the records. So he had the feeling that it could never adversely affect their accounts. The thing drifted on year after year, and he took very little interest. "If anything does come out of it, that is just that much salvage" (Warner, III, 355). Mr. Warner cannot recall the date but he thinks the first he knew, or his first recollection of the settlement or compromise was what he read in the papers (Warner, III, 359). That shortly after it was effected. Mr. Warner knew its terms. The final details that first came before him were in a letter which they had from the Subscribers Bureau. That recited the whole thing, 30 per cent was allotted to the trustees to pay various and sundry expenses, including legal expenses, 20 per cent was to go to the policyholders, and 50 per cent was to come outright to the companies (Warner, III, 360). Mr. Warner knew that 20 per cent had gone, or shortly would go, to the policyholders (Warner, III, 360). In a very short time he got substantially 50 per cent. He does not recall whether there was a small amount withheld in the hands of the custodian (Warner, III, 360). Mr. Cartlidge remembers that the settlement went through. He thinks the first knowledge that he had of record was a circular letter from the Subscribers Actuarial Committee of February 4, to the companies (Cartlidge, I, 475-476). He thinks this is the first notice that they had. He read this circular letter when it came in. Item Ten of the letter says "The money coming into the hands of C. R. Street and R. H. Folonie, trustees, will be employed to discharge any debts incurred by, or under the direction of this committee; agreed amounts payable to the superintendent of insurance and for his counsel; court costs; custodian's fees; attorneys' fees and

expenses of counsel for the companies; costs of administering and safeguarding the money in the hands of the trustees; contingent allowances or charges; any remaining balance subject to distribution to the companies will not, in the nature of the matter, be finally and completely distributable for some time to come" (Cartlidge, I, 476).

Mr. Cartlidge read that and thinks he has not seen it since. That was his knowledge of what the 30 per cent was held up for (Cartlidge, I, 476).

Mr. Cartlidge does not know whether the settlement of the Missouri litigation would have to be made with the Superintendent of Insurance. He would assume that it would have to be made with the approval of the court, but he does not know (Cartlidge, I, 493). The expenses they were paying out at the request of Mr. Street were $22,200.00 which was 5 per cent of the total, or 10 per cent of the 50 per cent which they were getting back (Cartlidge, I, 494). These companies had approximately $442,000.00 impounded funds. They got back $222,000.00 on the 50 per cent, and got $48,000.00 more, making a total of $272,000.00 that they got back out of the impounded funds (Cartlidge, I, 493-494). Mr. Warner's personal reaction was, "Well, we are getting more than we are paying out and it is that much salvage." That is how he regarded the whole thing from start to finish (Warner, III, 371). A salvage of 6 per cent is about the interest that Mr. Warner had in the case all the way through (Warner, III, 362). He looked at it more from his own company than the $175,000.00 (the amount to be paid by the companies represented at the 1936 meeting); how much was involved by his companies (Warner, III, 371). Mr. Street very definitely gave assurance that they would get a complete accounting. Mr. Warner thinks that was mentioned. That is what he counted on; that it would be explained (Warner, III, 368). These companies did not pay assessments for this litigation. They paid assessments by the Missouri Rating Bureau, which was financing the case, but was also carrying on the entire rating activity in Missouri for all the stock fire insurance companies belonging to their group; so that unless they had asked for an accounting, it would not show how much was for the litigation (Cartlidge, I, 466-467). Mr. Street never made an accounting for the $10,000.00 or the $12,200.00 check. Mr. Warner never asked for one. When they got this check in December,

which was the exact amount, he thought that was the payment back of the amount which had been paid for legal expenses, and that it was then going to be apportioned out to all the companies as Mr. Street had originally said it would. Mr. Warner thought that the last dividend of 5 per cent was a repayment of the advance of 5 per cent. He never talked to Mr. Haid about the matter at all. It was not mentioned between them (Warner, III, 367-368). Mr. Cartlidge did not report either of these disbursements to his board of directors. "Being foreign companies, two of the other companies involved, we have no directors in this country." Domestic companies have directors, but Mr. Cartlidge is sure that that was never brought before them. He did not report the two disbursements to the home officials of this company, except as it appeared in the accounts. There is no correspondence of any kind (Cartlidge, I, 492). "The saddest thing that has happened to us in the current review is the fact that we did not reimpound those funds in their entirety before we got a court order to do it, and I believe we were requested not to do it; but there is one thing, we wanted to pay the money back to the court" (Cartlidge, I, 492). Mr. Cartlidge knows of a report that a large amount of money was used by C. R. Street for the purpose of corruption of Missouri persons. It has now occurred to him that this money might have been used for that purpose. He has made no investigation to learn whether it has, because the investigation is apparently well under way (Cartlidge, I, 490).

GROUP FORTY-FOUR.

St. Paul Fire and Marine Insurance Company and Mercury Insurance Company are allied companies under common management, operating out of the same office. That was true in 1935 and 1936 (McKown, I, 166; Dosdall, I, 168). Mr. C. F. Codere is the president and lives in St. Paul (Dosdall, I, 194, 195). In 1935 Mr. F. R. Bigelow was president of St. Paul Fire and Marine Insurance Company and Mercury Insurance Company (McKown, I, 166). These two companies were in the federal court cases (Dosdall, I, 168). The Subscribers Actuarial Committee handled the sixteen and two-thirds per cent rate suit and represented both of these companies (McKown, I, 166). Mr. McKown, having no jurisdiction over it, never interested himself in the details, but just knew as a matter

of general information that his companies had this sixteen and two-thirds per cent rate suit in Missouri (McKown, I, 166). Mr. McKown heard of the settlement of the Missouri rate case, but with reference to when it was made, could not tell about that. He does not know who told him. He might have read it in the journals. No one ever told him directly that it was settled. He had nothing whatever to do with the settlement.

Mr. Dosdall acted for them from their office (McKown, I, 167).

They were advised prior to the time the settlement was made that negotiations were being made for a settlement of the controversy. He presumes that advices came from the Subscribers Actuarial Committee in Chicago (Dosdall, I, 168-169). Mr. Dosdall cannot answer offhand whether the advice came from committee members or from Mr. Street. He imagines the communication (that negotiations were being made for a settlement) came from the committee. He has no communication with him at this time. He heard that the controversy was settled in Missouri. He thinks that the first of this information was the letter when the distribution was made; 80 per cent to the companies and 20 per cent to the assured, and they got 50 per cent of the total. The 30 per cent was supposed to be used to meet litigation and to pay the expenses that the State incurred—to reimburse the State. That is his recollection of the way things were handled. He knew nothing about what the 30 per cent would amount to, other than the general knowledge of information that it appeared in the newspapers that some $10,000,000.00, or something like that, was involved. If it was around $9,000,000.00, 30 per cent would be $2,700,000.00 involved for expenses (Dosdall, I, 169). To the extent that the 30 per cent was not needed, in other words what was left over, was to go to the companies (Dosdall, I, 177). These companies received the 50 per cent that was provided in the settlement (Dosdall, I, 177).

This litigation was of many years standing and was highly, technically involved, and it was almost utterly impossible for the average layman to keep in contact with all phases of it. The whole thing functioned through this Subscribers Committee of which Mr. Street was chairman, and they had no reason to question the way

he was handling it. He had been handling it from the start and knew all of the angles of it, and they had to rely on him for information (Dosdall, I, 186-187). A copy of the contract of settlement made by Mr. Street with the state authorities was not furnished to their companies. Mr. Dosdall imagines that they have in the files a copy of the decree pursuant to that settlement, although he cannot say. He cannot say whether they have a copy of the trust agreement executed by Mr. Street and Mr. Folonie, but they were at least formally advised at some time that they were the trustees for the distribution. Mr. Dosdall has seen a copy of the report of the trustees to the court. Whether he saw the original or a copy of it, or a newspaper article, he cannot say. His companies have not had any final report. They had these letters from Mr. Street enclosing the original 50 per cent payment. The trustees never made any periodical reports. At least Mr. Dosdall does not recall having seen any (Dosdall, I, 203).

Defendant's Exhibit 35 (I, 171) is a letter dated March 9, 1936, from C. R. Street and R. J. Folonie, Trustees, sent to the St. Paul Fire and Marine Insurance Company, as follows:

> "We enclose check for $(see below), being 6% of the amount of your impounded premiums in Missouri as of May 1, 1935.
>
> This is a distribution out of the 30% of the fund turned over to us as trustees for the discharging of company liabilities in connection with this rate litigation - we think this can be done without reducing the fund below the limit of safety.
>
> | | | |
> |---|---|---|
> | St. Paul Fire & Marine Insurance Co. | $4945.14 | $1483.84 |
> | Mercury Insurance Co. | 1596.45 | 478.94" |
> | | | (pencil figures) |

Defendant's Exhibit 36 (I, 172) is as follows:

> "Send me check for 30% and trust me. C.R.S."

To the left is a disbursement voucher as follows:

"March 31, 1936 No. 11763
Mercury Insurance Company
Disbursement Voucher
C. R. Street, Agent
Check No. 16058 $1330.35
Account charged
Expense - Legal Expense - Fire"

Mr. Dosdall said the notation to the right signed "C.R.S." was in Mr. Street's own handwriting (Dosdall, I, 170). Mr. Dosdall presumes the memorandum came with that letter (Defendant's Exhibit 35) (Dosdall, I, 170).

Defendant's Exhibit 37 (I, 174) is a letter from Mr. Dosdall to Mr. Street in response to Mr. Street's letter of March 9th (Defendant's Exhibit 35). It is as follows:

"March 13, 1936

Re: Missouri Impounded Premiums.

"Enclosed are the checks asked for in the memorandum which was received attached to your letter of the 9th."

Defendant's Exhibit 38 (I, 176) is a letter from Mr. Street to Mr. McKown, "secretary," and is as follows:

"March 30, 1936

"I enclose herewith check for the Mercury, $1330.37; St. Paul, $4121.78, on account of Missouri impounded premiums.

This makes 11% of your impoundments as of May 1st last which you have received.

I also return you two checks payable to me and to Folonie as Trustees.

The situation has changed since I spoke to you, and have been to New York where a number of the 'big boys' met and I came back with Home check for $34,000 (they previously put up $15,000), Continental, $23,000 (they had previously put up $15,000), and others, all payable to C. R. Street, Agent.

Please send me Mercury check for $1330.35 and St. Paul check for $4121.75 expense, this being within a few cents of the same amounts as the checks now sent you.

All checks are in except these and two distant companies I have yet been unable to reach.

This simply increases the amount you will receive in the final distribution, a matter of bookkeeping, as it were, but it cannot be paid out of the Trustees' account - no bribery but legitimate expenses which we cannot put in our report to the court.

Full report will be made at the April meeting."

Across the letter in handwriting appear the words "Legal Expense - Missouri Impounded."

Mr. Dosdall stated that he understood the checks enclosed with the letter of March 9th (Defendant's Exhibit 35) were for 6 per cent of the impoundments of both companies as of May 1, 1935. He knew that the 30 per cent was to be used for litigation and expenses, and he understood that at least 6 per cent would not be needed for litigation expenses, and was being refunded (Dosdall, I, 177). Both companies received the 50 per cent that was provided in the settlement (Dosdall, I, 177). Mr. Dosdall understood the memorandum to mean that he was to send Mr. Street 30 per cent of the amounts shown at the bottom of the letter dated March 9th (Defendant's Exhibit 35). The pencil figures are their cashier's extensions (Dosdall, I, 178). With his letter of March 13 (Defendant's Exhibit 37) Mr. Dosdall sent checks for $1,483.00 and $478.94, which amounts were 30 per cent of the amounts specified in the bottom of the letter of March 9th (Dosdall, I, 178) —in other words, 30 per cent of the 6 per cent checks (Dosdall, I, 178, 187). Mr. Dosdall thinks that the figures in the first line of Defendant's Exhibit 38 were really 5 per cent, and the other checks on March 9th were 6 per cent, making a total of 11 per cent of their impoundments received (Dosdall, I, 182).

Mr. Dosdall imagines that in the letter of March 30th, by the reference to the "big boys" Mr. Street had reference to the men that he met in New York, whoever they were. He does not know and has no means of knowing. By the word "Home" Mr. Dosdall assumed that he meant the Home Insurance Company in New York, which is the biggest company, and when he mentioned the "Continental" he assumed that that was the Continental Insurance Company and their group. He took it as it reads, and he thought by the "big boys" Mr. Street meant the heads of the more prominent companies that he had con-

tacted in New York about something in connection with this expense item; Mr. Dosdall presumed how he was handling it (Dosdall, I, 186). None of the superiors of Mr. Dosdall's companies lived in New York and there were none of their "big boys." He understood the "big boys" to be presidents of the companies domiciled in New York, and both of his companies are St. Paul companies (Dosdall, I, 196). Mr. Dosdall knew nothing about any secret arrangements and did not understand at the time he received this letter that there had been some secret arrangements made by these "big boys" about these expenses (Dosdall, I, 196).

When Mr. Street in his letter said "full report will be made at the April meeting" he referred to the April meeting of the Western Underwriters Association (Dosdall, I, 202).

Mr. McKown cannot say whether Mr. Street's letter (Defendant's Exhibit 38) came to his desk. He does not recall ever seeing that letter until he looked it over the other day after Mr. Hobbs explained why he (McKown) was called down here, having nothing to do with Missouri (McKown, I, 204). Mr. McKown has no recollection of any conversation with Mr. Street about this situation. He has been to Chicago at different times. He was not familiar with the situation which Mr. Street said was changed, referred to in that letter. He does not recall Mr. Street having spoken to him about the matter. The contents of the letter do not refresh his recollection about the matter. He would not say that Mr. Street was in error in saying he had spoken to Mr. McKown about the matter. Mr. Street might have made some casual remark to him, but nothing having anything to do with the Missouri situation. It made no impression on Mr. McKown at all (McKown, I, 204-205).

Mr. McKown can answer whether Mr. Street might have gotten mixed up as to which one of them had charge of the Western department. He thinks that is the whole solution of the letter. He thinks Mr. Street, knowing that they were both secretaries, and seeing him probably more often than he did Mr. Dosdall, addressed this letter to him. If the letter came to his desk, which he does not remember, it was immediately turned over to Mr. Dosdall's desk, whose office is right next to his, and he dismissed it from his memory. He would say "Legal expense, Missouri impoundings" was in Mr. Dosdall's handwriting. It is not Mr. McKown's handwriting. Further-

more, Mr. Dosdall's stamp of receipt is on the letter and his is not (McKown, I, 205).

Defendant's Exhibit 40 (I, 181) is the check of the Mercury Insurance Company to C. R. Street and R. J. Folonie, trustees, for $478.94, marked "Legal Expense *Re*: Missouri Refund" which is voided.

Defendant's Exhibit 39 (I, 180) is the check of the St. Paul Fire and Marine Insurance Company to C. R. Street and R. J. Folonie, trustees, for $1,483.84, marked "Legal Expense *Re*: Missouri Refund" which is voided.

Asked why he voided the checks (Defendant's Exhibits 39 and 40), Mr. Dosdall said that Mr. Street sent those checks back and asked for new checks to replace them (Dosdall, I, 182-183). See note in explanation of list of checks making up the 5 per cent assessment, p. 301.

Defendant's Exhibit 41 (I, 184) is a letter dated April 1, 1936, from Mr. Dosdall to Mr. Street, and is as follows:

> "Enclosed find checks for the amounts specified in your letter dated March 30th. The other two checks returned are being voided.
>
> The procedure you suggest seems to be somewhat of an involved way of doing business, but we take it for granted that circumstances justify your request. Remittances are being sent you, therefore, although we admit frankly that we do not know what it is all about."

Defendant's Exhibit 42 (I, 185) is a letter dated April 2, 1936, from Mr. Street to Mr. Dosdall, and is as follows:

> "Will tell you all about it at the Association meeting, at which I propose to make a detailed report.
>
> In the meantime can assure you it is all right."

Mr. Dosdall made the checks and put in the word "agent" because of the statement in the letter "and others, all payable to C. R. Street, agent." It was on the strength of the fact that the others had made them to C. R. Street. He had no conversations by telephone or by any other communication with Mr. Street about it, or from anyone in his office or the New York office, or anybody else. He was sending back substantially the same sums. There is a difference in one of two cents and in the other of three cents (Dosdall, I, 188). The difference in the amounts did not arouse Mr. Dosdall's curiosity. Two or

three cents would not justify going to the trouble to find out where the difference came in, but the procedure did arouse his curiosity. By his statement, "We take it for granted that circumstances justify your request," Mr. Dosdall meant that Mr. Street had charge and they had confidence in him and assumed that it was all right and proper and justified. He had in mind the "circumstances" that because the previous checks had been made payable to Street and Folonie as trustees and Mr. Street asked for these checks as agent for substitution thereof, and he could not understand why it was necessary to make that distinction. It was not the difference in the amounts, but that change in procedure. That was a different distribution entirely. He understood that he paid back 5 per cent which would increase the amount which we would receive in final distribution as a matter of bookkeeping. He figured that it would increase what he could get on final distribution based on Mr. Street's statement. He took Mr. Street's statement for it. He never gave a thought to the fact that Mr. Street sent the equivalent of 5 per cent and called for him to send his checks back for the same amount, and that Mr. Street might as well have kept the money. It did not arouse his suspicion any more than that given in his letter of April 1st (Dosdall, I, 188-189). Asked if he did not know that the 30 per cent had been set aside and was adequate, Mr. Dosdall said he guesses it is right that the original 30 per cent intended for paying legitimate expenses would be over two and one-half million dollars and was adequate enough that Mr. Street had some two or three weeks before sent 6 per cent that would never be needed in legitimate expenses (Dosdall, I, 190). The fact that Mr. Street has the word "expense" there for these two checks did not arouse any attention or curiosity on Mr. Dosdall's part, other than the general procedure, the change in procedure of handling, and that is explained in Mr. Dosdall's letter enclosing the remittances. He understood the sums would be used for legitimate expensess just as Mr. Street assured him they were going to be used (Dosdall, I, 195-196). As to what possible expense there could have been that could not have been paid out of the trustee's account would just be idle speculation on Mr. Dosdall's part. Mr. Street was the man that was in charge of it, and they had their eye on him for information, and Mr. Dosdall never had reason to question any statement. He had known Mr. Street for many years and

had never had any reason to question any statement that Mr. Street ever made to him. The change was made because Mr. Street asked them to do it. Mr. Street advises in his letter, "The situation has changed since I spoke to you." The letter was addressed to Mr. McKown and turned over to Mr. Dosdall by Mr. McKown, which happens frequently in their office (Dosdall, I, 191). In answer to the question as to what was the situation that was changed Mr. Dosdall said that was just Mr. Street's statement and he took it for granted that that justified the procedure he suggested. "If you have faith and confidence in a man and he made a statement you took his word for it." Mr. Street said it was legitimate expense, and they took it for granted it was legitimate expense. At the time Mr. Dosdall got the letter he cannot say that he gave that angle (of what legitimate expense could not have been paid out of the other account) any particular thought.

"Q. Now isn't it a fact you didn't want to know, Mr. Dosdall, about it?

A. Well, I wouldn't say that.

Q. You didn't want to know too much of what he was doing?

A. I don't think my letter indicates that that follows that I didn't want to know about it.

* * * * * * * *

Q. Now what were the circumstances?

A. The only thing that aroused my curiosity, as I explained before, was asking for these checks payable to Street as agent and in substitution of the checks that were payable to Street and Folonie as trustees. * * * That aroused my curiosity" (Dosdall, I, 191-192).

Mr. Street was agent for the companies including these companies. Mr. Dosdall took that for granted (Dosdall, I, 192). Mr. Street gave them his assurance it was being used for legitimate purposes and Mr. Dosdall trusted him on that, and that is why he paid it to him, let him take this money and use it as he pleased. They took it for granted that it was to be used for legitimate purposes. Mr. Dosdall never called Mr. Street and put any verbal restrictions on him. The whole authority was he turned him loose to do as he pleased with his assurance that everything was all right (Dosdall, I, 192-193). Mr. Dosdall was asked if the statement in the

letter of March 30th (Defendant's Exhibit 38) "No bribery but legitimate expenses which we cannot put in our report to the court," aroused suspicion. "Doesn't it explain itself?" was his answer. The substance of the question was repeated and he answered "Other than in some way it involved the procedure." The substance of the question was again repeated.

"When Mr. Street says 'There is no bribery,' that is his definite statement, isn't it? —We had confidence in him and we accepted his definite statement on it."

Mr. Dosdall had never suggested to Mr. Street that he thought it was bribery, and the word "bribery" had not been used in the public press or elsewhere that he knew of. So far as he knew no one had suggested bribery and Mr. Dosdall certainly had not (Dosdall, I, 193).

"Q. Do you know of any reason Mr. Street would put that in there, 'No bribery but legitimate expense'?

A. Not unless he wanted to justify the procedure that he was—(witness was here interrupted).

Q. Now Mr. Dosdall, isn't it a fact that he says 'there is no bribery, but there is some legitimate expense we can't put in our report'?

A. That is right, he makes that statement.

Q. That still didn't arouse any suspicion in your mind at the time?

A. Except in connection with the whole procedure."

Mr. Dosdall discussed this with the president of the company and showed him the letter. He does not recall the president's order, but he showed him the letter and the general assumption is that they decided to do what Mr. Street asked them to do. He could not tell what he said to the President, it is too long ago. He showed the president the letter, or presumes he did. It is a matter of company policy that they usually show these things to the president, and discuss them, and decide what to do. Mr. Dosdall never had a situation like this before in his company and it was certainly unusual. He presumes he discussed it with the president. He would have approached the president, instead of the president's taking it up with him, because the letter came to his desk. He is not absolutely positive that he showed the president this letter, but that is what he would usually do. He cannot answer definitely, but he supposes he showed the letter to the president, that would be the ordinary procedure. He only surmises that he talked

with the president. It is possible that he paid these checks without consulting anybody. The ordinary procedure would have been to have sent it back to the bookkeeping department for checking to make sure it was correct. Mr. Dosdall cannot answer any more definitely than he has as to whether he discussed it with anybody, if he did it would have been with the president of the company, naturally. There was certainly nothing outstanding in the conversation, if they had any, that indelibly impressed itself on his mind. He had known Mr. Street for a good many years (Dosdall, I, 193-195). By the words, "Will tell you all about it," used in Exhibit 42, there the word "it" referred to the settlement of the Missouri litigation. He did not understand that Mr. Street was going to tell him all about these checks and why he wanted them. The whole thing was in regard to the Missouri litigation and is all in connection with it. He took it from that he was going to make his report at the next meeting (Dosdall, I, 197). The "Association" referred to in Exhibit 42 is the Western Underwriters Association which has meetings semi-annually, spring and fall meetings, and Mr. Dosdall imagines it has reports. He thinks he has a copy at home and that they all get copies.

"Q. Do you look them over to see what is going on?

A. We refer to them in the file."

A report that would explain what they paid out this money for would not be in the Western Underwriters Association meeting anyway, because this rate litigation functions through the Subscribers' Committee. The Subscribers Committee usually has a meeting at the same time, but that is not incorporated in the meeting of the Western Underwriters. Mr. Dosdall does not recall ever having looked for the report that Mr. Street said he was going to make "Anyway, if it was a report it was purely a perfunctory report" (Dosdall, I, 197-198). Mr. Dosdall never had any discussion with Mr. Street about this matter at all before or after. He cannot remember offhand whether he ever saw Mr. Street again. He presumes he saw him within the two years before he died, but Mr. Dosdall has never talked to him about it, and Mr. Street never offered any explanation (Dosdall, I, 197). Mr. Dosdall does not know offhand that he attended the next Association meeting. He does not recall if he was there, and if Mr. Street made any report, it was nothing to arouse anybody's curiosity (Dosdall, I, 197).

These companies do not have any employees in their employ that they do not trust. They would not be there if they did not trust them. They would get rid of them if they did not trust them.

"Q. Do you allow them to waive making a report on account of that great trust that you place in your employees?

A. Well, in a thing that is so highly involved as this litigation has been, that extended over such a long period of years, isn't it reasonable to, particularly for companies that are more or less out on the sidelines and not in the center of most of the activities in these organizations, wouldn't it seem reasonable to you to take for granted that the committees that you have chosen and trusted are responsible and capable of handling important matters of this kind in a proper manner?

Q. That certainly would explain why you trusted them, but it still wouldn't give you any idea of what your assets were, that whatever they did affected your assets greatly. Did you ever try to find out what your assets were?

A. We haven't had a final report on this yet, so far as that is concerned.

Q. Did you ever try to find out what your assets were?

A. We are still in process and eventually that final report would have been expected, of course, to show what distribution was made. In our bookkeeping setup, the Missouri impoundment was put on the books as agents' balances. At the annual statement time, they being more than ninety days old, they would have to be taken out of our assets. * * *

In other words, they are called 'non-admitted assets.'

Q. I know that, but you kept watching them.

A. But the funds we received were credited to those outstanding balances * * * and the rest of it is still there as outstanding balances.

Q. But the fact remains that the amount of the expense of the litigation would have a very, very material effect on what the companies' assets were. Now, you never followed it?

A. That report would eventually have come and we would expect it.

Q. You didn't have any interest in it except to finally get it when it came?

A. I wouldn't say the mere fact that we kept it on our books. We had an interest in it. It is still on the books, so far as that is concerned."

Mr. Dosdall stated that they have local agencies that are strong financially and they have great confidence in them.

"Q. But if you had a report from one of those agencies showing that they had held out some money and told you, 'This isn't bribery and trust me,' would that satisfy you?

A. Well, that is a little different relationship.

Q. Maybe it is, but, first would you do that?

A. We would tell them in a case of that kind they owe us so much for premiums written and the rest, any other matters wouldn't concern us and that was their responsibility. We are not concerned in any obligations they might have, but only concerned in their obligation to us.

Q. What if they would assure you it was their obligation but to still trust them it wasn't bribery?

A. That still wouldn't justify the nonpayment of a premium.

Q. But in this one single instance you did take Street's assurance where you wouldn't have taken any other employee's in your whole companies?

A. No, I wouldn't say that. This man was in charge of this litigation. We trusted him. The man had been in the business a good many years and always had a good record, there is no reason why we shouldn't have trusted him. It is his responsibility and was a tremendous task, that Missouri litigation was, really.

Q. You regarded him as being honest and all right?

A. That is right.

Q. Why did you think he had to recommend himself that there was no bribery in this? Why would a man of his character have to put that in a letter?

A. That is his own statement. I can't answer what he had in mind, unless he just wanted to emphasize his assurance that everything was all right" (Dosdall, I, 198-200).

On cross examination Mr. Dosdall stated that that item of an interest in certain funds in the hands of the

trustees is still carried on their books. Offhand, he cannot say the amount of that interest. The books show the amount. They have to deposit with the custodian a certain percentage of every premium written, and these statements are all filed with the custodian and when the deposit was made it went on their books as an outstanding balance. Interest in what the custodian has is carried on the books as it would be received in that outstanding balance, whatever it is. The interest in the funds that were still in the hands of Henne and Folonie as trustees is carried on their books as it would be represented in that outstanding balance. They have not had any accounting yet. It is not carried as an asset, it is a non-admitted asset. Everything that has not been accounted for at this time is in this account of the Missouri impounded premiums. The amount of the expenses that had to be paid out of the 30 per cent would finally come in a final accounting. They set up all of the premiums that they claim they are entitled to that are in the hands of the trustees as a non-admitted asset. Whenever it gets free from whatever has been taken out of it, then, so that they can absolutely claim it, it will be an admitted asset. Whatever is left will be an admitted asset (Dosdall, I, 200-202).

Mr. Dosdall has no means at all of knowing what were or would be the amount of the expenses of this Missouri litigation before it would be finally wound up (Dosdall, I, 202).

On the first case, the old *Aetna* v. *Hyde*, where they had to pay back to the state court the undistributed portions to the policyholders, they made the refund themselves and there was a certain small percentage of individuals through death or removal or something that they could not find, but they eventually paid that difference into court. He cannot remember the dates. At that time the state case was still undisposed of on appeal, and was just disposed of recently. There were expenses in that case, too. The Missouri litigation was still open. They considered it open and undisposed of (Dosdall, I, 202).

GROUP FORTY-FIVE.

The Scottish Union and National Insurance Company is organized in Scotland with its home office in Scotland. The American Union is a New York corporation, which is a subsidiary of the Scottish Union (Vreeland, II, 462).

Mr. Vreeland is aware of the fact that there was litigation in Missouri involving the 16 - 2-3 per cent rate case (Vreeland, II, 462). He knew what the Missouri rate settlement was shortly after it was made. It would be difficult for him to fix the date when he heard about it. He probably saw it in the newspapers shortly after the settlement contract was signed (Vreeland, II, 476). Whatever the settlement was it was in the newspapers or trade journals. It was 20 per cent to the policyholders, 30 per cent to the trustees and 50 per cent returned to the companies. Mr. Vreeland's understanding is that the 30 per cent was to pay certain accounts that the trustees were required to pay. He does not know whether they were required to pay the lawyers' fees on both sides, but he would think that would be a natural thing to come out of that fund (Vreeland, II, 476). Mr. Vreeland was asked if the Actuarial Committee or the Missouri Rating Bureau sent a report of this settlement and he said that there was something of that kind that came in (Vreeland, II, 476). He heard about the decree of the federal court of February 1, 1936, in which the court undertook to distribute the funds, 50 per cent, 30 per cent and 20 per cent. He could not say when he had that information (Vreeland, II, 477). These companies received the bonds from the custodian periodically, piece meal (Vreeland, II, 477). Mr. Vreeland does not know or think that anyone gathered or undertook to gather up the 5 per cent checks (Vreeland, II, 478, 479). Mr. Vreeland got the 11 per cent check, and he knew from whom it was at that time. He understood it when he received the check and kept it (Vreeland, II, 477). Mr. Vreeland does not know when the 5 per cent idea got into the picture but he knows that the first he ever heard of it was within a day or two of the time when those two last checks (Defendant's Exhibits 222 and 223) were drawn which was when a return of 11 per cent of the impounded premiums was sent to witness' companies. There was also an assessment of 5 per cent. That was in March, 1936. Mr. Vreeland got no letter in regard to that 5 per cent from anybody. There is a memorandum in this company's file that shows those figures and what 5 per cent is. Witness has not found that memorandum. Witness had a small lead pencil memorandum as to what the 11 per cent was and the 5 per cent was (Vreeland, II, 475). When Mr. Vreeland got the 11 per cent check from Street and Folonie, trustees, there

was a request for a 5 per cent check, or a check to make up the 5 per cent, to C. R. Street (Vreeland, II, 479, 477). Whoever made the request wanted 5 per cent made payable to C. R. Street, agent (Vreeland, II, 478). It was not explaned what it was for. Mr. Vreeland presumed that it was a 5 per cent assessment for legal expenses, because that is what Mr. Street talked about at the meeting nearly a year before (Vreeland, II, 479). The request was on a memorandum together with the check, and it showed the 11 per cent and the 5 per cent assessment. The 11 per cent was from the trustees, Street and Folonie. Mr. Vreeland does not know whether the 11 per cent was out of the 30 per cent (Vreeland, II, 477). Mr. Vreeland's recollection is that the memorandum came from Mr. Haid's office. He does not remember to whom he sent the 5 per cent checks of his two companies. He has no transmitting letter (Vreeland, II, 478). At the time the 5 per cent check was called for Mr. Vreeland was informed he could have a credit for the previous $4,000.00 (Vreeland, II, 478).

The checks (Defendant's Exhibits 222, II, 472; and 223, II, 474) together with the $4,000.00 check (Defendant's Exhibit 220, II, 468) constitute 5 per cent of these companies' impounded premiums (Vreeland, II, 475). The 1936 payment was charged on the books as legal expenses (Vreeland, II, 488).

Mr. Vreeland made the checks payable to C. R. Street, agent. He does not know whose agent; certainly not his company's agent. Mr. Street never had any authority to represent them as agent. Mr. Vreeland commonly refers to the people that write their policies as agents—the commission of authority as agent. Mr. Street had no authority to represent them as a selling agent. They do not refer to a man who is attending to a lawsuit as agent. Mr. Vreeland signed whatever checks were drawn to Mr. Street. They were so drawn because the request was to have the checks drawn that way, and if Mr. Vreeland ever gave it any thought at all as to the name of the attorney in there, he presumed that it was some banking arrangement started years ago, but he believes he gave it but very little thought if any. If at the time he drew the check he noticed the term "agent" at all, and did not question it, he probably had in mind that the banking account for the trustees was as agents or something of that kind. He gave no significance whatever to the term agent (Vreeland, II, 480-481). This companies' lawyer in the

litigation was Mr. Folonie (Vreeland, II, 465). Hicks and Folonie and Mr. Berger were looking out for these companies' cases in Missouri (Vreeland, II, 488). Neither Mr. Vreeland nor his company, that he knows of, ever asked Mr. Street either by letter, telegraph, telephone, or personal conversation to look out after that lawsuit for them (Vreeland, II, 488). The Subscribers Actuarial Committee with headquarters in Chicago, of which Mr. Street was the chairman, was handling the litigation for these companies (Vreeland, II, 462).

Mr. Vreeland thinks that the Subscribers Actuarial Committee was a mere self-constituted general, looking out for and forwarding it to the companies, and that that is all they did. The companies in this group never by word of mouth or in writing asked the committee to do anything for them. That committee just notified these companies from time to time of what was going on in the litigation. These companies' attorney brought that suit for them. These companies did not tell them to bring it, but have taken the benefits of the case and the impoundments that have been ordered by court. Mr. Vreeland presumes that these companies discovered fifteen years ago that they had a case down there and were served with the "customary * * *." Mr. Vreeland presumes that their attorneys would bring the suit that was filed June 1, 1930 (Vreeland, II, 489).

"Q. If you never authorized Mr. Street to have anything to do with the lawsuit, why did you deal with him at all when he came here?

A. Well, he was chairman of this committee, who was acting under the advice of attorneys. He was administering this case for all the companies, including our own.

Q. Well, the way you answered the question it sounded like you had never given any authority to him at all. How did they ever get to handling it? How could they handle this lawsuit for you without your consent? I don't understand it.

A. Well, we never gave any specific consent. This was a committee whose jurisdiction included Missouri, and when the case was brought up ten years ago or fifteen years ago, they undertook the administration of it in connection with the attorneys for all the companies, members of the Western Underwriters Association.

Q. Did they do that without the consent of the companies?

A. I think so. I think it would automatically be done."

Probably the Missouri Inspection Bureau had these suits brought in these companies names, and they accepted that action and ratified it (Vreeland, II, 488-489).

Mr. Vreeland does not handle the income tax matter (Vreeland, II, 487).

Defendant's Exhibit 224 (II, 483) is a letter from the federal internal revenue agent of the treasury department claiming a deficiency in the 1935 income tax of these companies in the sum of $5,265.42. It notifies the company that inclosed is a copy of a report supplementing that furnished you covering the investigation of your income tax liability for the year 1935, together with a form of agreement for your signature, if the report meets with your approval.

Defendant's Exhibit 224 A (II, 484) is the supplemental report referred to in the letter, Exhibit 224. It is as follows:

"-2-

"Scottish Union & National
Insurance Co. Supplemental
Hartford, Connecticut. Year 1935.

SUMMARY

Year	Deficiency
1935	$5,265.42

"Additional tax shown above is due to adjustments detailed herein. Changes were discussed with Mr. Korn, in charge of tax matters.

Taxpayer does not agree to disallowance of expense through I.E.A. Advance Commissions and Interest on Manila Electric Bond which are being protested for 1934 and decision will also apply to 1935. Other items are not disputed but taxpayer wishes to have report reviewed by Mr. Hotchkiss, Attorney.

Information Report dated July 21, 1937 on Missouri Impounded Premiums held that income from such was taxable in 1936 with no allowance for expenses paid by Insurance Executives Association. Adjustment is so made herein.

Schedule No. 1

Adjustments To Net Income

Net income as disclosed by original report		$582,729.39
As corrected		573,681.43
Net adjustment as computed below		$ 9,047.96
Unallowable deductions and additional income:		
(a) Legal expenses	$4,000.00	
(b) Excessive H. O. Expense	94.73	
(c) Excessive H. O. Tax	20.00	
Total		4,114.73
Nontaxable income and additional deductions:		
(d) Missouri Impounded Premiums	$13,162.69	13,162.69
Net adjustment as above		$ 9,047.96

Schedule No. 1-A

Explanation Of Items

(a) Legal expense assessed by Insurance Executives Association is disallowed for failure to substantiate the nature and reason for such expenditures..... $4,000."

The following notations appear in handwriting. Near the top of the letter "no protest." After the item (a), Legal expenses $4,000, O. K.

The companies took credit in their return to the government for $4,000.00 legal expenses for that year. That means the $4,000.00 paid to Mr. Street. The files indicate it was disallowed. Mr. Vreeland cannot say who put the handwriting memoranda upon the supplemental report. He did not put them on there, but he was consulted about what to do about it. The examiner came in and ran across this item on their books and made inquiries as to what it was for and they told him, "There it is, $4,000.00 legal expenses" in connection with the Missouri impounded premiums. He wanted more information, and they could not give it to him; so the examiner said he would not allow it. Later the accountant told Mr. Vreeland about it. Mr. Vreeland thought

that that money would be accounted for; that they would be given credit for it and they could tell them no more about it; so let it go, it was a broad as it was long. Mr. Vreeland does not know why he did not try to find out so he could give the examiner the information. It did not seem to him to be necessary to write to Mr. Street or Mr. Haid or anybody to give him the information. Mr. Vreeland does not know what he himself told to the examiner in explanation of the item. The companies' accountant told them that which Mr. Vreeland had told the accountant when Mr. Vreeland told him to draw the check; that it was for legal expenses in connection with the Missouri impounded premiums. The question on income tax must have come up after the year 1935. Mr. Vreeland cannot give any more explanation than that it was legal expenses for the Missouri lawsuit (Vreeland, II, 485-486). When they received the check for 5 per cent they considered that it was a return of the $4,000.00 and so marked it. In their income tax return for 1937 they considered that since they did not allow a credit in 1935 that the company should not pay a tax in 1937. In other words, if it was not expense in 1935 they thought it was not income in 1937 (Talcott, III, 153). The reason Mr. Vreeland did not write to Mr. Street and ask what it was for, was because it never occurred to him that it would be necessary. He did not consult Mr. Long, Mr. Bissell or any of the other executives in Hartford about it to find out what the item was. He had in mind that it was as broad as it was long; that if the examiner needed further explanation Mr. Vreeland could not give it to him, and that this money would come back to them. Mr. Vreeland does not know about the date, but if it was much later, it had already come back to them in another account (Vreeland, II, 486-487).

GROUP FORTY-SIX.

Mr. Walter D. Williams was for many years vice-president and manager of the Western department of the Security Insurance Company and for the last three years was president of that company (Williams, I, 71). In 1935 that company was a member of the Subscribers Actuarial Committee (Williams, I, 71, 89). Mr. Williams knows Mr. Powrie, who is in Chicago (Williams, I, 71). He is familiar with the Missouri rate litigation (Williams, I, 71). The Actuarial Committee had charge of that litigation in a very general sort of way, as it has charge of all

matters of common interest such as litigation. Mr. Williams knew that Hicks and Folonie were the Chicago counsel and Mr. Berger of Kansas City was the Kansas City counsel, and he presumes bills for legal expense during the period of this litigation were paid to these attorneys. The Missouri Inspection Bureau paid those bills (Williams, I, 72). Mr. Williams knew of the compromise made in May, 1935, but he knew nothing of the negotiations pending before that compromise was made (Williams, I, 72). He knew that Mr. Street negotiated the settlement, but Mr. Street did not do it as chairman of the Actuarial Committee (Williams, I, 73). Asked how the matter got out of the Committee's hands into Mr. Street's, Mr. Williams said Mr. Street was an individualist—a man that did not consult people. He just went ahead and did things (Williams, I, 73). After the negotiations of the settlement, the same was not submitted back to the committee. They got a memorandum from Mr. Street that the cases had been settled, and he told them the terms were as follows: 20 per cent of the impounded premiums would be returned to assureds, 50 per cent to the companies, and 30 per cent was to be retained for expenses and other things in a sort of trust fund (Williams, I, 73-74). This 30 per cent was to pay attorneys' fees for both the state and the companies (Williams, I, 74). Mr. Williams should say, roughly, that the amount of impounded premiums was approximately $9,000,000.00, and he understood that whatever 30 per cent of the amount was, some two and a half million dollars, was available for the payment of expenses of attorneys and other expenses of litigation. He knew nothing about an item of $100,500.00 raised by Mr. Street and turned over to Hicks and Folonie. He knows about it since this situation has broken, but did not know anything about it before (Williams, I, 74).

Defendant's Exhibit 10 (I, 81) is a letter dated March 17, 1936, to Walter D. Williams, Manager, from C. R. Street, stating that two checks are enclosed to the order of the Security and the East and West representing 11 per cent of the amount for their Missouri Impounded Premiums as of May 1st last. The notations thereon contain a direction that they be credited to the Missouri Impounded Premium deposit as follows:

Security	$6,513.65
East and West	2,865.63

Defendant's Exhibit 11 (I, 82) is a letter dated March 17, 1936, directed to, "Dear Walter," and signed by C. R. Street. It is as follows:

> "Regarding the official enclosure—was in New York last week and arranged with the 'big boys' down there for the handling of this proposition.
>
> After using these checks, please send me your check to my order as *Agent* for 5% of the amount of your impounded premiums as of May 1st last. Will give you full details later. All will do the same thing."

The notations on the letter indicate that the Security Insurance Company's check for $2,960.75, and the East and West Insurance Company's check for $1,302.56, each to C. R. Street, agent, were by these companies allocated to the Missouri impounded premium deposit account as 5 per cent of impounded premium to May 1, 1935. There was a further notation as follows:

> "Changed by C. E. November, 1936 to 'legal expense' at suggestion of Mr. C. R. Street, in his letter of 11/9/36 to Mr. Powrie."

Defendant's Exhibit 14 (I, 85) is a letter dated November 9, 1936, merely addressed "Mr. Powrie." The letter is unsigned and is as follows:

> November 9, 1936
>
> "Mr. Powrie:
>
> Missouri
>
> The companies have been paid 61% of their impounded premiums in cash, and if we can cut off the lawyers, who, however, show no disposition to let go of a good thing and little disposition to really compromise, we should be able to return to the companies about 9% additional in cash or 70% in all.
>
> Under court order the only distribution which has been made was out of impoundments down to May 1, 1935. In the fullness of time companies will receive 50% of the impoundments subsequent to May 1, 1935, but when this will be paid I do not know, nor, for that matter, does anyone else.
>
> On these impoundments, May 1, 1935, until November, the companies will not receive in the end in excess of 55% as against 70% on previous impoundings. This is for the reason that the assured under

the settlement receives a refund of one-third of 16-2/3% May 1, 1935, to November, whereas prior to May 1, 1935, the assured receives only 20% of 16-2/3%.

As to expenses I do not know what to say, nor, for that matter, will anybody else. It is my intention in this office to charge back to the State of Missouri in our Tax Returns for this year the 20% to be returned to policyholders on the early impoundings and one-third of the impoundings subsequent to May 1, 1935, as return premiums, which is an entirely legitimate proposition; *to charge about 5% of our total impoundings to legal expense* and to charge off anything that is left in the end as uncollectable premiums, the same as agents' balances not collected.

Before we went into this settlement special care was exercised to see that our attorneys approved a disposition of the case along the lines of the settlement as later made. They seemed really enthusiastic at the time and promised all sorts of co-operation, but I must say that later on their general disposition has been to delay in order that additional fees may be claimed—it is particularly unfortunate for us that this case has represented 99% of Mr. Folonie's practice during the five years prior to the time the settlement was agreed upon."

It was admitted by plaintiffs that Mr. Street wrote Exhibit 14 (I, 86).

Defendants' Exhibit 15 (I, 87) is a letter dated March 23, 1936, addressed to Mr. Charles R. Street, and is as follows:

"I am enclosing checks as follows:

Security Insurance Company	$2,960.75
East and West Insurance Co.	1,302.58

These represent 5% of the impounded premiums of each company to May 1, 1935."

This was the letter of Mr. Williams which he wrote as "Manager" (Exhibit 15, I, 87). Mr. Williams wrote Exhibit 15 without any comments (Williams, I, 90).

The notations made on the letters (Defendant's Exhibits 10 and 11) were made in Mr. Williams' office by the Cashier. At the time of those letters his company

received a greater part of its 50 per cent that was coming direct to the company at that time. The 11 per cent was a cash transaction and the other, he thinks, was a bond transaction (Williams, I, 74-75). Mr. Williams recognized the 11 per cent as being out of the 30 per cent (Williams, I, 75). Mr. Williams sent Mr. Street the checks from both his companies as requested in defendant's Exhibit 11 (Williams, I, 75). Mr. Williams does not know for whom Mr. Street was acting as agent when he took those checks. He did not have any understanding or idea about it. When asked why he made a check to C. R. Street as agent for an unknown principal Mr. Williams said, "Again I can only answer, did you know Mr. Street? The same reason will apply to that as to many other things." Mr. Williams could not answer and did not know whether he made the check to him as his agent (Williams, I, 75). Mr. Street, for his two companies, sent Mr. Williams about $9,379.00 and asked Mr. Williams to send back a little over $4,000.00 and he would furnish the details later, and Mr. Williams just did it. He gave it to him (Williams, I, 96). Mr. Williams knew that the check was in connection with the Missouri settlement. He thinks that was common knowledge later. He cannot tell how he knew it at that time. He cannot recall all of these checks, but it seems to him they had received the 50 per cent directly from the custodian. He never asked Mr. Street what proposition he referred to in defendant's Exhibit 11. He did not think it was a contribution to some charity fund, but thought it was for taking care of whatever expenses there were, the attorneys' fees or whatever other expenses there might be (Williams, I, 76).

Mr. Williams had just gotten the check from Mr. Street for 11 per cent refund out of the 30 per cent, and on the same day Mr. Street asked him to send a check for 5 per cent. In answer to the question, "Now did you stop to reason why he didn't deduct the 5 per cent in sending you the check for 11 per cent" Mr. Williams answered, "Yes," but then the fact that he wanted it payable to C. R. Street, as agent, made no impression upon him at all. He merely sent it to Mr. Street as agent because Mr. Street had asked them to do it. Without any knowledge, he had the impression it was paying the attorneys' fees and getting rid of whatever expenses there were (Williams, I, 76-77). Mr. Williams knew that the 30 per cent was withheld for the payment of attorneys'

fees and other expenses at the time he got this communication (Defendant's Exhibit 11) from Mr. Street. It is his recollection that the 11 per cent was a refund of a part of the 30 per cent, "Then we sent 75 per cent of it back" (Williams, I, 77).

When Mr. Street sent the 11 per cent, Mr. Williams did not understand that all of the legal expenses had necessarily been paid. The impression he had was that it was a dividend out of the 30 per cent; it was not a closed matter. He cannot answer the question as to whether he expected a dividend to come until the expenses provided for in the 30 per cent had been paid, except as to an impression that more money had been withheld than was necessary, and a certain amount of it would be returned to the companies. He cannot answer and has no idea why he was required to send back 5 per cent and did not have any idea at that time. He thought it was legal expenses because that was about all the expenses there were in connection with litigation that he knew of. He does not know why the information concerning the details was withheld in the letter unless there was a lot of conversation and things that could be done conversationally that could not be done any other way (Williams, I, 77-78).

Mr. Williams was commuting between Rockford and New Haven all during this interval, one week in Rockford and the other in New Haven. He saw Mr. Street but very, very little. That may have had something to do with his letter, "I will tell you about the details," or something like that, a very offhand letter (Williams, I, 78). Mr. Williams saw Mr. Street later, but Mr. Street did not give him the full details and he did not ask him. He would meet him somewhere in a meeting and one of them would leave. He did not see him in connection with any such details (Williams, I, 78).

Mr. Williams' company, of which he was in charge, had sent back to Mr. Street $4,263.31 and he did not know what it was for and had no information at all as to what it was for. He just assumed it was in connection with rate litigation, and on the strength of that he further assumed it was for legal expenses, and put it down on the books accordingly. They set it up on their books. The entry shows "C. R. Street, agent, Missouri Impounded Premium, dep." The cross entry says "legal expenses" (Williams and Statements of Counsel, I, 78-79). In their bookkeeping on the Missouri litigation,

they credited to the Missouri impounded premium account 10 per cent of all premiums collected in Missouri, and remitted that 10 per cent to the custodian of the federal court. They ran an account with each agent; so that the commissions could be figured when the matter was eventually disposed of; so that everything in connection with the Missouri impounded premiums was charged against the Missouri impounded premium account (Williams, I, 80).

Mr. Williams cannot say why the entry was changed at Mr. Street's suggestion. He does not recall seeing the letter in November, 1936, though he may have. He believes Mr. Street's suggestion was in a letter to Mr. Powrie. Apparently the letter (defendant's Exhibit 14), has been through his office. It refers to a matter of accounting. They were approaching the end of the year, and it was a question of what they should do with the 20 per cent, he would judge by that letter (Williams, I, 80).

At the time he sent Mr. Street those checks without any comments, Mr. Williams may have assumed, but he did not know, that all of the other companies were being called on for a similar amount. Mr. Street's letter said, "All will do the same thing." Possibly he knew that the total funds which would come to Mr. Street would amount to some $450,000.00. Mathematically that may be true. He was not in the least curious as to what that was about, and never made any inquiry of Mr. Street or any other person. It is true that he is responsible for the expenditures and disbursements and the profits that the Western department makes (Williams, I, 90). Mr. Williams did not report anything about it to his home office, except that in the regular course of business it appeared upon the trial balance that was sent to the home office every month. He did not write the home office about it. The trial balance showed that he had returned back to C. R. Street, as agent, 5 per cent of their portion of the funds, and the home office did not ask what it was about and has not asked about it to this day. It did not seem mysterious at the time, at least to Mr. Williams, knowing Mr. Street and the relationship and acquaintance running back a great many years (Williams, I, 90-91). When they got the check on March 17th and sent the check on March 23rd, they did not report the transaction to the home office except as it appeared on their trial balance for March like any other disbursement.

It was charged to Missouri impounded premiums and he made no other explanation to his company. They got that in April in ordinary course and no question was asked. He got no request from the auditor in the home office to explain what it was. It was not criticized (Williams, I, 93). He just charged it to the Missouri impounded premium (Williams, I, 92). It did not occur to him that a Superintendent of Insurance might examine his books and want to know what that entry was for, because the entries show for themselves. The record is clear that the disbursement was made. It never occurred to him that a Superintendent of Insurance might ask what that money represented. They do ask those things occasionally, but they had never had that occasion arise. No Insurance Commissioner had ever questioned any transactions with them, because their entries usually show what they are for (Williams, I, 92-93). They had Mr. Street's voucher and that was all they had (Williams, I, 93). Mr. Williams cannot recall—he does not think that they ever disbursed money out of this account for this Missouri litigation—prior to this time. As he recalls it the assessments came from and were made by the Missouri Inspection Bureau. He does not recall, but there may have been a statement of what the items were for when they got an assessment from the rating bureau (Williams, I, 93-94). After Mr. Williams sent Mr. Street this $4,200.00 he did not see him so much. As stated before, he was commuting between Rockford and New Haven every other week (Williams, I, 91). After that he did not see Mr. Street at any time (Williams, I, 78). Mr. Williams knows he saw Mr. Street after the $4,200.00 payment, and the Missouri rate litigation might have been mentioned, but not so specifically as to make an impression on his mind. You could hardly get two insurance people together of late without mentioning the Missouri litigation (Williams, I, 91). Mr. Street did not identify the "big boys" mentioned in his letter. Mr. Williams presumed that they were the companies in New York and Hartford, but not one of his companies. He cannot answer why the "big boys" would have anything to do with an expenditure that affected his company (Williams, I, 91), but Mr. Williams presumes that "big boys" refers to the important companies in the business and his companies do not qualify in that

(Williams, I, 91). Mr. Williams did not pay attention to what the "big boys" arranged. He sent Mr. Street a check. In fact the "big boys" had nothing to do with it at all, and he did not know what any agreement was with the "big boys" (Williams, I, 92).

Mr. Williams does not know why Mr. Street sent the separate letter instead of just writing it in the letter in which he sent the checks. There was nothing secret about it so far as Mr. Williams was concerned. That separate enclosure made no impression on him (Williams, I, 92). Mr. Williams paid it solely because Mr. Street requested him to do that. He never before disbursed $4,200.00 in money that he did not know what it was for, and again he refers to Mr. Street. If Mr. Street had asked him for his shirt and had told him he would tell him about it later, he would give it to him and he would have given him his company's shirt in the same way. His confidence in Mr. Street was absolute. If Mr. Street would ask him to do a thing, sometimes he might not agree with him, but he would still do it even though it involved the company's money, because he had absolute confidence in his integrity and ability (Williams, I, 94).

"E. A. S." is E. A. Shearer, chief accountant in the Western department. After the first of May this company moved most of its transactions to the home office in New Haven and Mr. Shearer has been transferred since (Williams, I, 94).

Mr. Williams has since learned through the press, or gotten information to the effect, that over $400,000.00 of this money was used for an unlawful purpose. He has made no inquiry to find out whether any part of the $4,200.00 that he sent went for that purpose. He does not know how to answer the question, "Aren't you interested to that extent?" Theirs is a "very small toad in this puddle." He is not in a position to learn. He has made no effort. To this day he has never made an inquiry of any person as to what this $4,200.00 was for, and has never known excepting as it appears on their records (Williams, I, 95-96).

Mr. Williams first learned that there was a question of an unlawful and fraudulent use of money when they commenced stirring up the federal grand jury in the spring of 1939. He knew that the federal and state government were both investigating to find out what had happened to the money (Williams, I, 96).

GROUP FORTY-SEVEN.

The Michigan Fire and Marine has its home office at Detroit, Michigan. It does not have its home office where Mr. Schlesinger, the treasurer of the other companies of this group and assistant treasurer of the Michigan Fire and Marine, has his home office (Schlesinger, II, 529). This group has a Western department (Schlesinger, II, 529, 534).

A.

At the Home Office.

The President of the Springfield Fire and Marine Insurance Company is Mr. George C. Bulkley. He has been under a doctor's care (Schlesinger, II, 529).

Defendant's Exhibit 234 (II, 530) is the certificate of Frederick B. Sweet, M. D., of Springfield, Massachusetts, dated August 3, 1939, that George G. Bulkley was recently operated on by this physician; that he is convalescent, but he is in no condition to appear "in your court."

Defendant's Exhibit 235 (II, 531) is the affidavit of Mr. Bulkley. By consent of the attorneys it was offered in evidence as his testimony (II, 530).

Mr. Bulkley has a general knowledge of the Missouri rate litigation, but the details in connection with it, except as given by him have all been handled by the Chicago office of this group. On March 23, 1936, Mr. Bulkley received a telephone message from Paul L. Haid, President of the Insurance Executives Association, who told Mr. Bulkley that a distribution was to be made from the 30 per cent "trustees' funds" held by R. J. Folonie and Charles R. Street, trustees, and that they would receive from Mr. Street a check for $34,807.36, representing 11 per cent of the Missouri impounded premiums of the Springfield group. Mr. Haid requested that Mr. Bulkley have mailed to Charles R. Street, agent, a check for $15,821.52, representing 5 per cent of the Springfield Group's impounded premiums. Mr. Bulkley asked Mr. Haid the reason for the 5 per cent payment, and Mr. Haid stated that he understood it was for legal and other expenses. Mr. Bulkley told him that they would require a voucher in connection with the payment and Mr. Haid stated that this would come forward from Mr. Street. Thereupon, Mr. Bulkley instructed their treasurer, Mr. F. A. Schles-

inger, to have a check issued for $15,821.52, payable to C. R. Street, agent, representing 5 per cent of their impounded premiums. This instruction was carried out. Shortly afterwards they received from Mr. Street a voucher indicating that the payment was on account of Missouri litigation expense (Defendant's Exhibit 235, II, 531-532).

In March, 1936, this group received a 11 per cent disbursement out of this impounded premiums. That check came to Mr. Schlesinger's desk. He cannot say whether it came through the regular channel of the mailing department or whether it came by way of their office messenger from the president's office (Schlesinger, II, 532-533).

Prior to the time of receiving the 11 per cent, before the 11 per cent check had actually come, Mr. Schlesinger was instructed to issue a check for 5 per cent of these premiums. He got the instructions to write the 5 per cent check within two or three days before receiving the 11 per cent check. President Bulkley gave those instructions verbally. He instructed Mr. Schlesinger to cause a check to be issued, payable to Mr. Street as agent, for the 5 per cent proportion of their impounded premiums. Mr. Bulkley said it was for legal expenses in connection with the Missouri rate case. There was no discussion between Mr. Schlesinger and Mr. Bulkley at that time as to why they would be called upon for paying legal expenses. Mr. Schlesinger thought it was a pretty good trade of dollars and cents (Schlesinger, II, 533). Mr. Bulkley told Mr. Schlesinger that Mr. Haid had told him that a distribution was to be made from the 30 per cent trustees' fund held by trustees, R. J. Folonie and Charles R. Street. Mr. Schlesinger did not know whether it was coming from the 30 per cent or not. He is not sure whether Mr. Bulkley told him that. Mr. Bulkley mentioned the 11 per cent and the 5 per cent. They had already gotten their 50 per cent in securities. Mr. Schlesinger does not know the exact date that those were received. He did not happen to be at the office. He cannot place the sequence of the receipt of the securities with this check (Schlesinger, II, 534). Prior to the time of this compromise, the details of the litigation had been handled out of the Western department. Mr. Schlesinger had no connection with the case at all, and Mr. Haid had not been known to him in the case at all, and Mr. Schlesinger had no communication with him whatever

(Schlesinger, II, 534). Mr. Schlesinger did not ask the manager to advise them what the check was about. What he particularly had in mind was to inquire whether he had anything more coming. They had other funds impounded out there, and he gained the impression after his return to the office, after the receipt of these securities, that they were going to get some more bonds (Schlesinger, II, 536). Mr. Schlesinger had knowledge of the compromise of the Missouri rate litigation. He had a general knowledge that the compromise had been made (Schlesinger, II, 532). He had knowledge that in February, 1936, a federal court decree was entered based upon the compromise (Schlesinger, II, 532). He believes that his company received a detailed statement in the nature of an official circular from the Actuarial Committee setting out the terms of the compromise. He has forgotten whether he saw the circular itself or a reference to it in the press (Schlesinger, II, 532).

Mr. Schlesinger knew that 30 per cent of their impounded premium totaling $316,000.00, or substantially $105,000.00, had been allocated for the payment of expenses, and that they had $316,000.00 impounded premiums, but he did not know the money had been paid out. He had a general knowledge of the 50, 30, and 20. He was not sure that when they sent him 11 per cent it came out of the 30 per cent. He only had a general knowledge of his case from its inception right through to its conclusion (Schlesinger, 533-534). Never, prior to this year, did he hear of a $100,000.00 fund, or of a fund approximating that amount, received in connection with this litigation. His first information concerning that was when he saw it in the Journal of Commerce last week (Schlesinger, II, 532). Mr. Schlesinger does not know whether he can answer the question as to whether the Actuarial Committee was handling the litigation for his company. He had seen the circulars from time to time, but he would not receive them in his official duties at the head office of the company (Schlesinger, II, 534). Mr. Schlesinger was instructed by his president that the check for $15,821.52 was for legal expenses. Mr. Schlesinger did not write the Western department to find out what it was for (Schlesinger, II, 537).

Q. Now I will call your attention to this: "As far as check for $15,821.52 is concerned, we will advise you later after we get in touch with Mr. Street." Did he advise you later?

A. I have no knowledge of having seen anything. I understand the accounting had not been completed.

Q. Were you advised later that they never got in touch with Mr. Street? * * * Were you advised that anyone did?

A. No (Schlesinger, II, 538).

Defendant's Exhibit 236 (II, 539) is a letter dated March 23, 1936, from the treasurer to Paul L. Haid. It is as follows:

> "At the suggestion of President Bulkley, I am pleased to inclose this company's check payable to C. R. Street, Agent, in the amount of $15,821.52, representing our proportion of the expenses in connection with the Missouri rate case litigation.
>
> Will you kindly see that a receipt is furnished us for our files which is a requirement of the laws of this state as well as our auditors."

In this letter to Mr. Haid (Defendant's Exhibit 236) when Mr. Schlesinger stated, "our proportion of the expenses in connection with the Missouri rate case litigation" he knew what the president told him (Schlesinger, II, 535.

Defendant's Exhibit 237 (II, 540) is what accompanied the four checks to Mr. Schlesinger's desk. He does not know the handwriting of Paul Haid (Schlesinger, II, 535). At the time he wrote Mr. Haid the letter he sent him the check (Defendant's Exhibit 239, II, 541) and asked for a receipt. They have a receipt signed by Mr. Street, agent (Schlesinger, II, 535).

Exhibit 237 (II, 540) is as follows:

"Total impounded prems -	316430.51
11% checks herewith 4 cks. total	34807.36

5% impounded prems-
$15821.52

Check payable to C. R. Street *Agent* to be sent here"

Defendant's Exhibit 240 (II, 542) is a letter to Mr. Bulkley dated March 31, 1936, signed C. R. Street, Agent. It is as follows:

"I acknowledge the receipt of your check for $15,821.52, account, Missouri Legal Expense."

At the time of Mr. Harding's letter (Defendant's Exhibit 238) Mr. Schlesinger knew the purpose of the check he had been called upon to deliver. It was for legal expenses (Schlesinger, II, 535-536).

B.

Communication Between the Home Office and the Chicago Office.

Defendant's Exhibit 63 (I, 294-295) is a letter which is as follows:

"March 24, 1936

Mr. John C. Harding, Vice President
Springfield Fire & Marine Insurance Company
222 West Adams Street
Chicago, Illinois

Missouri Rate Case

Dear Sir:

Supplementing President Bulkley's conversation with your office yesterday, we are communicating with you regarding the latest developments in this case.

On yesterday Mr. Bulkley received a telephone conversation from Mr. Haid indicating that checks were in the mail to us for a payment in cash on account of our impounded premiums (11%), and requested that we forward him a remittance at once for 5% of the impounded premiums to apply on expenses.

We accordingly mailed our check payable to C. R. Street, Agent, for the 5% which amounted to $15,821.52 as you will note from copy of letter attached.

Today we have received the following checks totalling $34,807.36 which according to our computation is just 11% of our total impoundings:

Springfield	$29,040.25
Sentinel	2,270.88
Michigan	1,741.83
New England	1,754.40
	$34,807.36

Dep. 3/26/36

The only thing that accompanied these checks was a memo as follows, written in longhand:

Total Impounded Premium	$316,430.51	34,807.36
11% checks herewith	34,807.36	15,821.52
5% Impounded Premiums	15,821.52	18,985.84
Check payable to C. R. Street, *Agent* to be sent here. Clark		363.17
	WD-	18,622.67

We charged the remittance to our contra account, and would suggest that you reimburse us with your check.

According to our computations, the total bonds so far received plus the enclosed remittances less our check to Mr. Street for the 5%, makes the net recovery in money - $167,612.91 or practically an even 53% of our total impounded premiums.

We understood there were some more bonds coming, but perhaps Mr. Haid's action in securing the enclosed checks, will alter that plan. We would be interested in being advised regarding the transactions referred to herein at your convenience, and also enlightened as to what, if anything, may be expected in the future."

Yours very truly,

F. A. Schlesinger
Treasurer"

FAS:MCH:1
enc.

Mr. Hobart's letter of March 26 is an answer to witness' letter of March 24 (Schlesinger, II, 537).

Defendant's Exhibit 62 (I, 297) is an inter office bulletin (I, 291) dated March 26, 1936. It is as follows:

"March 26, 1936

"Attention concerning Missouri Rate Case

In accordance with your letter of March 24th, we enclose herewith our check $15,821.52, to reimburse you for check of the same amount that you set to Mr. Haid.

The checks totalling $34,807.36 we are depositing today and will report in the monthly account as a

credit to Missouri Impounded Premiums. As far as check for $15,821.52 is concerned we will advise you later after we get in touch with Mr. Street. Presumably it will be charged as a separate disbursement item with the caption 'Expenses in connection with the Missouri Rate Case,' in accordance with Mr. Williams' letter of February 21st."

Yours very truly,

B. E. Hobart
Auditor

CF:
Encl.

The above communication did come to Mr. Hobart. He assumes it went back to the home office (Harding, I, 298).

C.

At the Chicago Office.

Mr. Harding assumes that he knew of settlement at the time it was made in May, 1935, or shortly thereafter. He knew of rendition of decree in February, 1936. He knew of the declaration of trust. He recalls distinctly, but would not be positive now, that the money was allocated 20, 30 and 50 (Harding, I, 286).

He knew that the 30 per cent was allocated for the payment of attorneys' fees and expenses in connection with the litigation. He would not go so far as to say that he understood at that time that it was to take care of all of them. They hoped it would, and believed that there would be a substantial return to the companies. In due course his company received a dividend of 11 per cent out of this 30 per cent (Harding, I, 287). The check for $15,821.52 was made in Springfield, Massachusetts. Mr. Harding does not know who directed the check to be made out, signed, and delivered. It must have been by the authority of the president of the company. He knows that his office in Chicago had nothing whatever to do with the issuance or delivery of it to Mr. Street. If he had investigated or wanted to complain about that money being paid to Mr. Street he would have complained to the president of the company. It was paid out of the president's office, so far as he knows (Harding, I, 299). If Mr. Harding's home office had written and told him that here was an item of $15,000.00 expense that had been

incurred in writing business in Massachusetts and they were charging it to his department, he would not have made a complaint to the president about it. He certainly would have just absorbed it. They know it would be reasonable. He would not care to be heard as to whether it was reasonable or not. Their experience demonstrates that those things are always reasonable, everything that is charged up proportionately to his department. They have never found any occasion where they had a reason for complaint over a period going back to 1876. No matter how it looked, it would make no difference to them. If the president of the company decides some way that expenses are charges to be allocated he certainly has to accept that. They are free to object if they want to, and they sometimes do if they think they have a better plan, but they do not discuss it at the moment. They wait until a more opportune time (Harding, I, 299-300).

Mr. Harding was not asked to return 5%, because he was not in the country at that time. That was done at Springfield when he was gone. Mr. W. H. Lininger was in charge of his Chicago office while he was gone (Harding, I, 287). Mr. Harding learned that (payment of 5 per cent to Mr. Street) after his return in 1936. He did not go into it until along in April some time (Harding, I, 290. He does not recall where he was when he first learned there had been a 5 per cent return to Mr. Street. He thinks it was probably along the first half of April after he came back and cleaned off the desk (Harding, I, 291). In the first half of April he did not learn what the 5 per cent was for. He made no inquiry. He did not even know it was claimed that it was for attorneys' fees and expenses. He did not pay very much attention to it and did not undertake to figure out. He did not try to delve into the mysteries of what the 5 per cent was. It was charged against his office here. They are a department office, not a general agency. They are not running on their own power or working on commission business. They are just as much a department as they would be if witness were occupying a desk at Springfield, Massachusetts, that is all (Harding, I, 291-292). When Mr. Harding looked over the file where he got all the information he has, he does not know whether he ran across Defendant's Exhibit 62. His initials are not on it. If he had seen it, he would have probably had his initial on it (Harding, I, 291).

Mr. Harding does not see his initial on Exhibit 63. He was not there at the time anyway. It is a memorandum from his associate, Mr. W. H. Lininger, who opened the head office mail when he was not present. Mr. Harding thinks he saw this file after he came back, but there is nothing on it to indicate that he did, and he has no recollection of seeing it. He did not answer the letter. So far as the file shows, the answer is signed by B. E. Hobart; but Mr. Harding thinks the letter came to his attention, and that the whole file was probably brought to his attention along in the middle of April when he came back (Harding, I, 292). So far as this check for $15,821.52 is concerned, the letter (Defendant's Exhibit 63, I, 294) says "we will advise you later, after we get in touch with Mr. Street." That was probably called to Mr. Harding's attention when he got back. He never got in touch with Mr. Street. He did not discuss with Mr. Hobart whether or not he had been in touch with Mr. Street. He assumed, as he did in any case of that kind, that the matter was finished business by the time he came back, and the correspondence was turned over to him for information and comment if he cared to make any. He left that correspondence without making any inquiry whatever (Harding, I, 298). He never even asked Mr. Hobart whether or not he had gotten in touch with Mr. Street. He paid no attention to what the money was for.

Q. No interest or no concern of yours?

A. Well, that is a question—I don't know that that is quite a fair question.

Q. Well, was it?

A. I hadn't reached the point where I had to take it into account (Harding, I, 298).

Mr. Harding had nothing to do with the income tax returns of his company (Harding, I, 292). The income tax return is made entirely from the books and records in the home office. The income tax man did not interview Mr. Harding. He never had any contact with any of them (Harding, I, 292).

Mr. Hobart handled all of the accounting on the impounding, but had nothing whatever to do with the compromise (Hobart, I, 300). Neither Mr. Hobart nor Mr. Lininger nor anybody in the Chicago office had anything to do with the payment of this money to Mr. Street. The home office paid it. The only thing Mr. Hobart

could say is that the home office, if anybody, knew what it was paid for (Hobart, I, 304). The first thing on the money was a letter from the head office addressed to Mr. Harding, and is Defendant's Exhibit 63 (Hobart, I, 300-301). Mr. Hobart wrote the letter which is Defendant's Exhibit 62. Mr. Hobart did not know anything about what the $15,821.52 was for, and they did not get hold of Mr. Street at the time when Mr. Hobart wrote the letter nor thereafter. Mr. Lininger and Mr. Hobart made an effort, and Mr. Street was out of town. Mr. Lininger is in Norway just now (Hobart, I, 301). Mr. Hobart does not know when Mr. Street got back, but he remembers that they called the office around that time and he was out of town. He probably called before he wrote the letter. He probably called once or twice (Hobart, I, 302). Mr. Hobart never got in touch with Mr. Street, and does not think that Mr. Lininger did (Hobart, I, 301). Mr. Hobart never took it up with Mr. Harding. He was out of town, out of the country. Mr. Harding came back within a week or ten days after the letter was received, and Mr. Hobart never asked him about it (Hobart, I, 302). Mr. Hobart does not know and does not recall, but they may have advised over the phone or something that it was expense (Hobart, I, 304). Later on Mr. Hobart and Mr. Lininger determined that it was just another Missouri expense. They had very little discussion about it. For some reason that Mr. Hobart does not now recall, it was thrown in the expense. He does not know whether Mr. Lininger told him to throw it into expense. All Mr. Lininger claimed he knew about it was a long-distance call from the head office from either the president or the treasurer, and Mr. Lininger reported that conversation to Mr. Hobart right away. All that they were interested in was that they would advise them (home office) immediately if the figures were not right. The home office asked them to confirm the $15,000.00 and $34,000.00 over the phone (Hobart, I, 302-303).

Mr. Hobart does not think he had any subsequent telephone conversation after he got Mr. Schlesinger's letter of March 24, 1936 (Defendant's Exhibit 63), but he asked Mr. Lininger, and he does not think Mr. Lininger had any information. It was still a mystery. Mr. Hobart probably used his discretion by putting it as an expense item. He has a bit of authority from the company, and if they had kicked, they probably would have written to him in connection with the department accounts. When

he came to that decision he did not write the company as to his decision, but just put it into the account. In answer to the question "and decided to let the company find out as best it might what it was for" witness answered "Yes, that is true." He never got an answer from them; so it was satisfactory with them (Hobart, I, 303). The home office was advised by charging it through the account as expenses. The question involved was whether it should be charged in their accounting to the home office as expense or carried as an asset for a while until they decided what the money was for. It might be an advance to a lawyer or something, but Mr. Hobart never complied with his promise to get in touch with Mr. Street and then advise the company, and the matter was entirely dropped except that Mr. Hobart made some entries on the books, which went to the company (Hobart, I, 301-302). It was simply a question as to whether it was to be charged as an expense or an advance of some kind. There were so many charges and expenses going through that they did not know what it was all about (Hobart, I, 301). There has never been any discussion by witness with Mr. Lininger or Mr. Harding about what this was for (Hobart, I, 302). To this date it is absolutely a mystery to Mr. Hobart what it is for. He did not know a thing about it (Hobart, I, 302). The only thing that Mr. Hobart had to do with it was, as a mere auditor or accounting agency, to charge this matter up and to reimburse the home office to the proper account. If the treasurer of the company asked them to reimburse him for a certain expense it is not for Mr. Hobart to criticize him. At page 949 of his own check register, that $15,821.52 check with which he reimbursed the home office was charged to expense on Missouri impounded premiums (Hobart, I, 304) and also carried to the ledger as expense, and from there to the department accounts. That was all shown when Mr. Hobart returned it to the home office at the end of the month. It is a suspense item. It is customary in the management of this particular company to carry considerable sums from time to time in open suspense item. For instance, if they pay a loss on a policy that was originally written in the East, they put that in the suspense account and let the home office reimburse them in order to keep the cost statistics in each department separate. It is a very common practice among insurance companies. There was nothing unusual at all in the size of the sum of $15,000.00

to be carried in such expense accounts (Hobart, I, 304-305). There might be six to ten suspense items a month carried for all kinds of purposes (Hobart, I, 305). Mr. Hobart considered it unusual; but so many expenses in Missouri were charged through the audit bureau or the inspection bureau, ordered as a direct assessment. Here is another new way of raising money, and it got to be natural. That is really the way Mr. Hobart looked at it at the time (Hobart, I, 302).

"Q. It is so unusual the company asked you to find out what it was about, didn't they?

A. No."

Not only was the company supposed to know what it was about when they paid the money out, but the information was probably given to Mr. Hobart by somebody that it was Missouri expense. It may have been Mr. Lininger, Mr. Harding, or the Actuarial Bureau. At the time it was a question of getting it on the books. Whether to carry it for awhile as an asset, or to charge it out as expense. It was just an accounting proposition (Hobart, I, 305).

GROUP FORTY-EIGHT.

Mr. Siedel knows that in the so-called Missouri litigation, his company and some 136 other companies had suits pending in Missouri over rates (Siedel, II, 28). Asked who was in charge of this litigation for all of the insurance companies involved witness said, "We followed only the Subscribers Actuarial Bureau in this regard, and never ducked beneath the surface. We were a small company."

Q. In other words, the Subscribers Actuarial Committee handled the litigation for you?

A. That is right—the Subscribers Actuarial Committee is the proper name (Siedel, II, 28).

Mr. Siedel handled practically all of this Missouri litigation for his company. All correspondence was turned over to him. He handled it so far as any official of his company had anything to do with it. He never heard of Mr. Folonie (Siedel, II, 28). Mr. Siedel has heard that Mr. Street, the chairman at that time, really handled the litigation as agent for the insurance companies, including Mr. Siedel's company. Mr. Siedel knows that now, but he has not said that he knew then—before the settlement was made—or he was positive at that time.

They never objected to the person or persons who were handling it. It was entirely satisfactory to them, whoever it may have been. But it was his belief at that time that Mr. Street was handling it (Siedel, II, 29). Mr. Siedel thinks he did not attend the meeting held in May, 1935, relating to the insurance settlement. He does not think his company was represented at that time (Siedel, II, 30). Any expenses paid by the Stuyvesant Insurance Company before May, 1935, were paid through the Missouri Inspection Bureau. Mr. Siedel is not certain at the present time whether the checks were drawn to the Missouri Inspection Bureau or the Subscribers Actuarial Bureau. It was either one or the other (Siedel, II, 28-29). Mr. Siedel knew that the settlement agreement was entered into in May, 1935. He thinks they had a letter from the Subscribers Actuarial Bureau. He does not know the date (Siedel, II, 29). Mr. Siedel's company may have received a letter in May or June, 1935, from the Missouri Inspection Bureau. He does not recall any before 1936. He became advised along about that time that a settlement had been entered into, and he knew in a general way, at least, the terms of that agreement, which were, briefly, that the policyholders would get 20 per cent, the companies would immediately get 50 per cent, and 30 per cent would be turned over to the trustees to pay expenses, and any part not used to pay expenses would be returned to the companies. That is what they understood. His knowledge came from a letter which he received. He did not discuss this situation with other insurance executives in New York. They may have discussed it among their own executives in the office, but as a rule they do not stick Stuyvesant matters out to other companies (Siedel, II, 29-30). Asked whether the settlement agreement was satisfactory to his company, Mr. Siedel said they just took it as a matter of course. They made no objection to what their agents had done for them. Therefore, they were willing that it be done whether it was satisfactory or not (Siedel, II, 30). His company received a check, or possibly some bonds, sometime before March of 1936, from the custodians of this fund representing 50 per cent of its impounded premiums, and his company received and accepted them (Siedel, II, 34). This company drew the check (Exhibit 139) at the request of Mr. Haid (Siedel, II, 30).

Mr. Haid called Mr. Siedel on the phone and stated that they were to get 11 per cent back and were to re-

turn 5 per cent of the total impounded premiums as legal expenses. Mr. Siedel did not ask Mr. Haid why they wanted the money, and he thinks that Mr. Haid stated at the time that it was expenses. They so charged it in their records (Siedel, II, 32). Mr. Siedel thinks Mr. Haid told him it was for legal expenses. They would naturally charge it off to legal expenses. He does not recall that Mr. Haid did tell him so. Mr. Siedel did not ask Mr. Haid what type of expenses it was for (Siedel, II, 32). Mr. Haid told Mr. Siedel, the secretary of this company, to whom to make the check payable and Mr. Siedel followed his instructions. Mr. Haid said it should be made payable to C. R. Street. He did not say C. R. Street, agent, and Mr. Siedel's company's check is not paid out to C. R. Street, agent. Asked if he did not think it strange that Mr. Street was not designated in some official capacity, Mr. Siedel said that they knew he was agent for them in that regard. He was an agent for the attorneys; and agent for Mr. Siedel's companies. As Mr. Siedel recalls the request was not made to designate him as agent, on the check. They did not question the matter (Siedel, II, 33). Asked whether it struck him as unusual that Mr. Haid would ask for a check for expenses when Mr. Siedel knew that the trustees had 30 per cent of the total impounded premium to pay expenses, Mr. Siedel answered, "Well, we didn't, for the simple reason that we had withdrawn from the state in 1933, and all refunds that we received at that time we more or less took as salvage on an asset that we considered * * *." He was again asked if it did not strike him as unusual that the trustees would pay 11 per cent of the total impounded premiums and ask for another check back to pay expenses, since he testified that he knew that the trustees held 30 per cent of the total impounded premiums with which to pay expenses. He answered, "Not unusual, no" (Siedel, II, 32). Mr. Siedel's company received the 11 per cent check. Mr. Siedel delivered his company's check and received the other in return. He sent it over by a messenger boy. He never learned anything more about this settlement or the way it was brought about, other than he has already testified, until this present case was brought up (Siedel, II, 35). Mr. Haid was not a member of the Subscribers Actuarial Committee that Mr. Siedel knows of, and Mr. Siedel did not know why Mr. Haid should call upon him about this, except that they were under the impression that Mr. Haid's office was repre-

senting the Subscribers Actuarial Bureau in New York. Mr. Siedel did not know that Mr. Koeckert in New York was a member of that committee; so he paid it without question, because he felt that those people were taking care of his company's interests (Siedel, II, 34). No other executive had anything to say on whether or not this money would be paid. Mr. Siedel requested the accountant to draw the check. It certainly is his duty as an officer of the company to try to keep down expenses and handle things in a businesslike way, but he gave no thought as to whether he should pay out this money just because Paul Haid told him to. He does not ordinarily pay out money without knowing what it is going for, but they took Mr. Haid's word that this was legal expenses (Siedel, II, 33).

Mr. Siedel made the payment without question because he felt that the committee members were taking care of his company's interests. He had no objection to their taking care of those interests. His company turned it over to them, and always followed them after turning it over to them (Siedel, II, 34). Mr. Siedel said that possibly he could not think of any reason now why they should do that, but they do not consider those things when they are requested to pay out money. If they turn over any litigation to a committee, they follow that committee without argument (Siedel, II, 32). It possibly would have been simpler to have merely paid Mr. Siedel's company 6 per cent instead of paying the 11 per cent and requesting 5 per cent back. Those things did not go through his mind at that time. In other words, Mr. Haid merely asked him for the money and he paid it without question. Mr. Siedel stated: "You will find that most of the smaller companies do exactly the same" (Siedel, II, 34). This may have been the first time in all this litigation that Mr. Siedel was called upon directly by any individual or committee other than the Actuarial Committee to pay out money for the expenses. Theretofore it had been done by assessment in the regular course of business, just as all the expenses of the bureau are paid. In other words, the assessment would heretofore include not only this litigation but other expenses (Siedel, II, 33-34). At the time Mr. Siedel did not bear in mind that theretofore the litigation expenses were by an assessment including this litigation and other expenses. They did not think this was an unusual way to go about financing this litigation (Siedel, II, 34).

In the last few months Mr. Siedel has heard that this money collected at that time was used to corrupt certain political representatives, Tom Pendergast in Missouri, and, through him, the Superintendent of Insurance. Prior to the time it came out in the newspapers, Mr. Siedel never knew anything about that; never heard a word of that. It was gossip around New York and insurance circles that money had been used to obtain political influence in Missouri, relative to this settlement. He heard that at various times prior to its coming out in the paper. He did not hear it about May or June, 1935, and does not recall when he heard it. He did hear it at various times. It was a matter of common gossip, but not at that time. It became such just prior to this last case, he would judge, early in 1938. They did not make any investigation to try to ascertain whether or not that was true (Siedel, II, 35-36).

Early in 1938 several people mentioned around the street that there may have been political corruption out in Missouri on that rate case. He does not recall when it was in 1938. It may have been around the same time of the newspaper publicity. Mr. Siedel had a request for federal information for the check they paid out to Mr. Street, but that was all. He does not recall when that was made, and does not know whether it was while Mr. Street was alive. He did not know that Mr. Street was dead until the attorney just mentioned it. As near as Mr. Siedel can remember at the present time, the first information he got was sometime in 1938. He thinks it was in 1938 when the federal men first asked him to give information concerning the check (Siedel II, 36).

GROUP FORTY-NINE.

This company now is, and in 1935 and 1936 was, located at Trenton, New Jersey, and was so located at the instigation of the suit (Breen, I, 384). This company's impoundments up to May 1, 1935, were $57,000.00 (Breen, I, 383). Mr. Breen understood that the litigation was compromised, and right after the compromise was made he understood from insurance journals and things of that kind that 50 per cent was to go to the companies, 20 per cent to the assureds, and 30 per cent for expenses. He has never had any contrary information. He had practically no further contact with reference to this impounded premium. His company is isolated from New

York City, and their general information comes from the insurance journals. "We don't get a chance to associate with them" (Breen, I, 383-384). Mr. Breen presumed that the handling of this litigation for Standard Fire Insurance Company of New Jersey was under the supervision of the Actuarial Committee, or rather a subcommittee of which Mr. Street had charge (Breen, I, 384).

"Q. Was it the Subscribers Actuarial Committee out of Chicago that was handling it?

A. No, I think it was a sub-committee of which Mr. Street had charge" (Breen, I, 384).

Mr. Breen knew Mr. Street and knew him as the man who was in charge of this litigation. Mr. Street never discussed this compromise with Mr. Breen. Mr. Breen was asked if Mr. Street made a compromise whether he made it as "your agent" and it was agreeable to "you," whatever it was. He said he did not know about that; that the only thing they knew as soon as anything did not seem right about it, they would assume their attorneys were protesting it. So far as Mr. Breen knew, Mr. Street was handling it and he was willing that he should handle it (Breen, I, 384). Mr. Breen did not know Mr. Charles R. Street intimately. He knew him for many years, probably to say "hello" if he passed him on the street or saw him at a meeting (Breen, I, 384). Mr. Breen did not discuss this compromise with Mr. Street before it was made, but the compromise was agreeable to his company. He did not discuss it with Mr. Street afterward. He may have discussed it miscellaneously here or there with some friend that he met, "but never an official" (Breen, I, 384). He was not at the conference in New York or Hartford to discuss the compromise before it was made (Breen, I, 385).

Paul Haid advised Mr. Breen by telephone that his company was to get a check for a return of 11 per cent. Mr. Breen assumed it was a return of the expense money, return of the 30 per cent. In addition to that, they were to send a check for 5 per cent for legal expenses. There was no letter of any kind from Mr. Street, Mr. Haid, or anybody else. The whole information Mr. Breen got was from Mr. Haid over the telephone. Mr. Haid merely told Mr. Breen that he (Haid) was sending them a check for 11 per cent dividend, and he had to have back a check for 5 per cent for legal expenses for attorneys, Mr. Breen supposes. Mr. Breen got the 11 per cent check (Breen,

I, 385). The check was Folonie's and Street's as trustees. Mr. Breen made the 5 per cent check to C. R. Street, agent, under instructions from Mr. Haid who did not further explain why it had to be "Street, agent" (Breen, I, 385-386).

"Q. Whose agent was he, Mr. Street?

A. Well, he would be the agent of that money I would say.

Q. Was he your agent to spend that money as he pleased?

A. Well, I wouldn't want to say as to that. He was supposed to spend it the way it should be spent.

Q. I know, but did you put any restrictions on how it could be spent?

A. No, we didn't.

Q. Did you write any letter to limit it?

A. We were being, as we thought, he was under the supervision of the committee and that OK'd whatever he was doing and it was all right.

Q. Did you have anything from the committee saying, 'This is all right to pay this'?

A. No.

Q. Did you have any assurance from anybody that it was all right to pay it except Mr. Haid's assurance?

A. That is right.

Q. That is all you had?

A. Yes" (Breen, I, 386-387).

Mr. Haid said it was for legal expense (Breen, I, 386). Mr. Breen does not know whether the Western rating bureau had assessed them for legal expenses from time to time. He did know that 30 per cent was for legal expenses. It did not occur to him as being peculiar and unusual when they got a check for 11 per cent that they would ask for a check back for 5 per cent; they apparently wanted it to show that way, and if they were paying legal expenses, it ought to show that. In answer to the question "Notwithstanding, you understood the 30 per cent was set aside for legal expenses?, Mr. Breen said that they probably did not give a lot of consideration, but their thought probably would be that the committee was faced with an immediate expense for payment "Although while it agreed to turn it over I didn't know they had it." Mr. Haid did not tell Mr. Breen that they needed

it immediately. Mr. Breen just assumed they needed it (Breen, I, 386).

Mr. Breen does not think that they made any memorandum and put in their files in the office, reciting this transaction. The records show that the check came in and the check went out; so they had a record. He might have taken his pencil and jotted down what they did. He would not want to say he did or didn't. He would not think it most likely that he did not. He would not need a letter from anybody. The check would be properly endorsed. When the check came back it would be tied up with the return checks of that month. The entry is on the books. They would undoubtedly have a file of Missouri litigation, and he may have taken his pencil and marked that on there. Mr. Breen personally had charge of that file, because he practically took care of that himself (Breen, I, 387). Mr. Breen's company heretofore had been called upon for various documents and other data. At the time they furnished these checks and books to Mr. Milligan for the use of the federal grand jury they got a request for any correspondence, and they simply had their treasurer give whatever was asked. If they asked for a memorandum and if he made one, they gave it. They gave anything that was asked. Mr. Breen would not say whether they asked for letters or any other correspondence. He knows they complied with anything wanted. They have no letter transmitting that file. They have no letter pertaining to any of these transactions (Breen, I, 387-388).

Judge Henson: "Then I introduce the entire grand jury file, 142."

This file, in addition to Defendant's Exhibit 76, consisted of Defendant's Exhibits 77, 78, 79, 80 and 81 (I, 391).

Defendant's Exhibit 77 (Breen, I, 392) was an unsigned memorandum stating that the impounded premiums of this company as of May 1, 1935, were $57,820.53; that 5 per cent of the impounded premiums was $2,891.02 and check issued 3-24-36 for the last named amount. Defendant's Exhibit 78 (Breen, I, 393) is a page from a cash book. Under date of March 24 appears "C. R. Street, agent- -Legal Expense, $2891.02." And the same number again appears under the heading "Sundries."

Defendant's Exhibit 79 (Breen, I, 393) is a sheet from a journal of the Standard Fire Insurance Company

of New Jersey under the heading "June 1936." It contains the following:

"Missouri Impounded Premiums Held by Trustees Expenses	$ 2,891.02	
Legal Expenses		$ 2,891.02
To transfer amount of $2,891.92 from Legal Expenses Account to Missouri Impounded Premiums, held by Trustee-Expense Accounts."		

Defendant's Exhibit 80 (Breen, I, 393) is Journal Account of said Standard Fire Insurance Company of New Jersey, entitled "Missouri Impounded Premiums Held by Trustee-Expense" which among other things shows an entry on June 30, 1936. from Journal, page 65, charging the account with $2,891.02.

Defendant's Exhibit 81 (Breen, I, 393) is a sheet from a ledger. Under the heading "Account Legal Expenses" and under date of March 31, 1936—the sum of $2,891.02 appears as a debit and under date of June 30, 1936, the same sum appears as a credit.

Mr. Breen has heard through the public press and otherwise since that time, that something like $450,000.00 of the insurance companies' contributions had been paid to Mr. Thomas J. Pendergast of Kansas City for corrupt purposes. They would not be able to tell whether their check went into that corruption fund. He has made no inquiry, other than that they assumed that the committee handling it now will follow it through and make them a complete report. They cannot know anything individually. Mr. Breen has not inquired of the committee as to whether any of his company's funds went into that fund for that purpose, nor has he inquired of any of his lawyers on that subject (Breen, I, 389).

GROUP FIFTY.

The Patriotic Insurance Company of America is an American affiliate of the Sun Insurance office and is incorporated in the United States. It is owned by the majority stockholders of the Patriotic Assurance Company of Dublin, which in turn, is owned by the Sun Insurance office (Tregaskis, II, 16).

Mr. Tregaskis does not recall the date, but knows that a compromise agreement was effected and that a

court decree was rendered in the federal court in the early part of 1936, substantially carrying out a compromise agreement. He received a letter from the Subscribers Actuarial Committee setting forth the terms of the decree. He knew that 30 per cent was allocated to Folonie and Street as trustees for the purpose of payment of expenses (Tregaskis, II, 16). Mr. Tregaskis had no information at the time as to a fund for $100,000.00 being raised for any purpose. He heard it from Mr. Murphy the other day. Prior to that he never heard of it (Tregaskis, II, 16-17). After the creation of the trust Mr. Tregaskis received a remittance from the 30 per cent fund in the sum of 11 per cent. He had a call from Mr. Erskine, of Mr. Haid's office, who handed the check to him. Mr. Erskine came to his office personally and gave him the 11 per cent check. Mr. Tregaskis has no record or recollection as to whether it was signed by the trustees. To the best of his recollection, Mr. Erskine told him that he was commissioned as a messenger to deliver this check for 11 per cent to the companies domiciled in New York, and Mr. Tregaskis understood that it came from Mr. Folonie's office and that Mr. Erskine was a messenger from Mr. Folonie's office in connection with it. Mr. Erskine also requested that they remit to him 5 per cent, which was required for expenses. No details were given. Mr. Tregaskis asked Mr. Erskine if there were any details about it and Mr. Erskine said, "No, I am simply a messenger" (Tregaskis, II, 17). Mr. Erskine told Mr. Tregaskis that he could not give him any details at all in regard to the expense (Tregaskis, II, 17). Mr. Tregaskis instructed the accountant to make a requisition for the check and gave him the necessary information therefor (Tregaskis, II, 17-18)

Defendant's Exhibit 136 (II, 19) is a requisition of the Patriotic Insurance Company dated March 23, 1936, for a check payable to the order of R. J. Folonie, agent, for $249.31, in payment of "Expense, Missouri Litigation," chargeable to "Suspense, Western department."

Mr. Tregaskis was asked if the word "agent," following the words "R. J. Folonie," on this requisition was not in a different writing; he said, "No"; he recognizes the writing; it is their accountant's writing. That is his initial and they are both in the same handwriting. Mr. Tregaskis is convinced it was written at the same time. "I think that the lightness is due to its being blotted im-

mediately." The attorney stated he was talking about the fact that the word "agent" is lighter than the rest of it. Mr. Tregaskis said his belief that it was written at the same time is because of his independent recollection that that was the way it was requested (Tregaskis, II, 26-27). Mr. Tregaskis said that to clear up this point about the possibility of the word "agent" having been put in at a different time, under their office procedure, the cashier is unable to draw a check until the receipt of a requisition. The check was drawn, "R. J. Folonie, agent," in accord with the requisition, and the cashier must have had that requisition in that form "to draw" that "requisition" in that way (Tregaskis, II, 27).

Senator Hollingsworth: "I agree with you, and I think that is all" (II, 27).

The check shows it was not paid until November 17, 1936, and that it was issued March 23, 1936 (Tregaskis, II, 20).

Defendant's Exhibit 137 (II, 22) is the portion of the Patriotic Assurance Company's contribution to the 5 per cent. It was also issued to R. J. Folonie, Agent, and bears the same endorsement as the check issued by the Sun, "Pay to the order of C. R. Street, R. J. Folonie, Agent." It was not cleared until November 17, 1936. Mr. Tregaskis has no explanation to make of that (Tregaskis, II, 27). He has no idea why the check was not cleared through the banks until November 17, 1936. It was not called to his attention at any time that the check was still out. He never heard of it and never knew of that unusual length of time. Mr. Murphy mentioned it to him the other day. He had not heard of it until then (Tregaskis, II, 20, 24). Mr. Tregaskis, being asked whether his accountants, or auditor, ordinarily note an outstanding check from March until November, said it would be noticed, because it would appear in bank reconcilement statements; that there is nothing unusual in checks being outstanding for a long period of time—for that period and even longer. He would say that that was an unusually large amount. There might be an estate tied up in case of a loss payment or something of that kind where it would not be cleared for so long. He has no recollection whether his office directed any inquiry to find out what had become of the check. He thinks if such an inquiry had been instituted he would have heard of it (Tregaskis, II, 24). Mr. Tregaskis issued many hundreds of checks a day. It would not pass through

his hands. It was not called to his attention before Mr. Murphy talked to him about it several days ago. He never knew anything about it prior to that time (Tregaskis, II, 23-24). The words in the endorsement "Expense, Missouri Litigation," is the company's part of the endorsement, in order to make the endorsement the receipt. The typewritten words, "Pay to the order of C. R. Street" and the signature, "R. J. Folonie, agent" were not affected by the Sun Insurance Company office. He assumes that endorsement was placed on there by R. J. Folonie after the check was issued out of his office. Mr. Tregaskis has no explanation as to why the check was endorsed "Pay to the order of C. R. Street, R. J. Folonie, agent." He had never noticed that before (Tregaskis, II, 20-21).

Defendant's Exhibit 138 (II, 25) is the requisition of Sun Insurance office, Ltd., for a check to the order of R. J. Folonie, agent, for $3,591.06 in payment of "Expense Missouri Litigation," chargeable to "Suspense, Western department." Concerning this exhibit Mr. Tregaskis said that the "agent" is very faint (Tregaskis, II, 23). The word "agent" was written on the requisition (Defendant's Exhibit 138) at the time Mr. Tregaskis made up the requisition, he would say, because his recollection is that that was the way that they were asked to draw the check. He has an independent recollecton at the time (Tregaskis, II, 23).

The check of the Sun Insurance office (Defendant's Exhibit 300) was issued to R. J. Folonie, agent. At that time Mr. Tregaskis did not intend for R. J. Folonie, as agent, to endorse the check over to C. R. Street. He constituted Mr. Folonie as their agent. He understood that the money was going to Mr. Folonie "on behalf of our united interests." He meant by "R. J. Folonie, agent" that Mr. Folonie was to be their agent, and that Mr. Folonie was to pay it to whom it was due. Mr. Tregaskis assumed that it was for legal expenses incurred. He did not understand that C. R. Street was a lawyer, and when the check came back to his office it was endorsed by Folonie, agent, over to C. R. Street (Tregaskis, II, 23).

So far as the Sun Insurance office and the Patriotic Assurance Company are concerned the two checks of March 23, 1936, certainly did not go to Mr. Pendergast or Mr. O'Malley or anybody else who got their money in the spring of 1936. None of Mr. Tregaskis' companies'

money went to any improper place (Tregaskis, II, 26). He has no idea for what purpose Mr. Street used it. He thought, when he issued it, that it would be for the payment of legal fees then due (Tregaskis, II, 26).

GROUP FIFTY-ONE.

This group consists of the Svea Life and Fire Insurance Company, Ltd., a Swedish company, and the Hudson Insurance Company, a New York company. The first named company owns practically 25 per cent of the stock of the American company, and there is a common management out of the same office. The resident manager of these companies is J. W. Wennstrom. He has been at his home, not in his office, since June 1 with a very bad heart attack, and is considered quite ill. He is not expected back to his office until around October 1, and will not be able to appear and testify in regard to this hearing prior to that date (Allen, II, 153-154). In his connection with his company Mr. Allen had knowledge of the Missouri rate litigation. He handled all of the details of it and has all the knowledge that the company has in regard to it. He knew nothing about negotiations for a settlement in the early part of 1935. He learned that a settlement had been effected when he received the letter from the Subscribers Actuarial Bureau, "etc.," after the court decree had been entered (Allen, II, 154). He knew that the Subscribers Actuarial Committee had active charge of the litigation (Allen, II, 161).

Mr. Allen said their companies' total impounded premiums amounted to about $13,000.00 for each company. They ceased writing direct business in the latter part of 1932. The total impoundings for the two companies were only about $25,000.00 and they got back something like $15,000.00 and returned to Mr. Street a little over $600.00 for each company (Allen, II, 161).

Mr. Allen thinks that he was the one that attended all meetings in regard to this litigation. Those meetings were long prior to the settlement (Allen, II, 161).

In the early part of 1936, in February or March, Mr. Allen received some checks, "etc.," from the custodian, being about 45 per cent of the impounded premiums (Allen, II, 154). Mr. Allen knew the terms of the settlement. They did not get 50 per cent; they got about 45 per cent. Some part was held back by the custodian. Mr. Allen knew that 30 per cent was placed in the hands

of the trustees, namely, Folonie and Street. He presumes that the 30 per cent was to pay legal fees, "etc.," all expenses; he understood it was to pay the expenses of the litigation when he got the letter (Allen, II, 154-155). After receiving some 45 per cent they received the 11 per cent check through the hands of Mr. Wennstrom who received it through Mr. Paul Haid's visiting the office. Mr. Haid made a personal call to the office and had a conversation with Mr. Wennstrom at which Mr. Allen was not present. Mr. Allen was called into the room and Mr. Wennstrom said, "Here is a check for 11 per cent of the impounded premiums," and requested Mr. Allen to draw a check for 5 per cent to the order of C. R. Street as agent, without stating what the 5 per cent was for and without revealing any of the conversation he had had with Mr. Haid (Allen, II, 155). Nothing else was said between Mr. Allen and Mr. Wennstrom at the time Mr. Haid was there (Allen, II, 155). Mr. Allen thereupon issued checks for the 5 per cent for both of his companies (Allen, II, 156).

Mr. Allen made the check to C. R. Street, agent, but could not say whether Mr. Street was their agent in charge of this litigation. They used the word "agent" because they were asked to draw the check that way. He presumes they constituted him their agent for disbursing this money (Allen, II, 157-158). No requisition was made for the checks. Under certain circumstances, it is the practice of the company to have requisitions for checks, but not where they are receiving money and paying out a proportion of it (Allen, II, 156).

Mr. Allen received no information at the time as to what the check was for and has none now. All he knew was that it was in connection with the Missouri impounded premiums. He did not know for what purpose Mr. Street was to use it. He presumes it was for expenses, but could not say what expenses (Allen, II, 156). Mr. Wennstrom did not reveal to Mr. Allen that Mr. Haid had not told what the 5 per cent was for, but when Mr. Allen talked to Mr. Wennstrom the latter did not know what it was for, and they had a further conversation due to the fact that they wanted to get this Missouri impounded premium out of the way, and to the fact that they had withdrawn from the state in the year 1932 (Allen, II, 157). After Mr. Haid left Mr. Allen and Mr. Wennstrom had a conversation in which it was said that

the 30 per cent was apparently too much to take care of expenses, and therefore they were refunding 11 per cent and that Mr. Street undoubtedly had expenses other than through the trustees and was paying them directly. That was all they figured it out to be. Mr. Allen could not say and did not know what expenses that might be. Mr. Wennstrom had no light on the matter whatever (Allen, II, 156-157). Mr. Wennstrom and Mr. Allen talked it over, and neither had any information at all as to what it was about. On speculation they thought it might be some expenses that Mr. Street was obligated for in addition to the expenses set up in the 30 per cent trust agreement. Mr. Allen did not know that the 30 per cent trust agreement provided for payment of all litigation expenses on both sides, but knew there was 30 per cent set aside for litigation expenses (Allen, II, 157). When they had their conversation Mr. Wennstrom and Mr. Allen did not get the circular letter to check up on that matter in any way after the issuance of the checks. They made no further effort to find out what it was all about (Allen, II, 157). Mr. Allen never thereafter attempted to ascertain the purpose for which the money had been paid out by Mr. Street. No promise of any accounting was made by Mr. Haid that Mr. Allen knows of (Allen, II, 158). There was no correspondence about this transaction nor explanation of it to the home office. The only report made to the home office in Sweden or elsewhere in regard to this transaction was through the bookkeeping methods (Allen, II, 161).

So far as Mr. Allen knows, nobody connected with his company ever authorized Mr. Street to pay any money in the way of bribery or any other improper way to influence an official to agree to this settlement. He knows nothing about that at all (Allen, II, 161).

GROUP FIFTY-TWO.

The Tokio Marine and Fire Insurance Company has United States managers, namely, Johnson and Higgins, who were such managers in 1935 and 1936. They are located at 40 Wall Street (Kline, II, 184). This company has affiliated companies, but they are not involved in the federal case (Baker, II, 218). Mr. Kline knew, as general information, that the Subscribers Actuarial Committee of Chicago was handling the litigation for the company (Kline, II, 186). He knew something about the Missouri

fire rate litigation in 1935 and prior thereto, and he knew that about May, 1935, a settlement agreement was entered into, and that about February 1, 1936, the federal court in Kansas City approved that agreement and ordered distribution of the funds in accordance therewith. He was not familiar with the terms of the settlement. Under the management of Johnson and Higgins, Mr. J. A. Kelsey was appointed general agent to handle the fire business and was familiar with the Missouri situation through its entire course up to the end of the litigation (Kline, II, 185). The United States managers probably know something about the Missouri situation, because they get accounts that go through them to the home office in Tokio. George V. Coe is the man in the firm who would probably know more about it than anybody. He is one of the vice-presidents in charge of the Tokio. The superintendent of agencies would know nothing other than what would be reflected in reports passing through his hands (Kline, II, 185-186). Mr. R. V. Baker is the general auditor for this company and is in New York. Mr. Kline has not talked to him about the Missouri litigation. Mr. Henry died this March and Mr. Baker succeeded him the first of April (Kline, II, 187). Mr. Kline did not talk it over with Mr. Henry. The Missouri litigation may have come up in the general course of business. Mr. Kline does not recall any particular conversation that he had with either Mr. Henry or Mr. Kelsey about it. There was nothing about his duties that required him to talk to them about it (Kline, II, 186). Mr. Baker had been connected with the company prior to that time as Mr. Henry's assistant (Kline, II, 187).

Mr. Kline was familiar with the check (Defendant's Exhibit 172, II, 189) which was drawn to the order of Mr. Street. At that time he had in his employ Mr. C. L. Henry, the general auditor in charge of all the accounts. As stated, Mr. Henry and Mr. Kelsey, the President, are dead. Whatever testimony Mr. Kline gives is just what happened to fall his way (Kline, II, 185). Mr. Kline signed the check that was made out and first signed by Mr. Henry, the general auditor, since the check required two signatures as a matter of form. He knows nothing about the facts (Kline, II, 186). He knew nothing about the issuance of the check (Defendant's Exhibit 172) except that Mr. Henry asked him to sign it. Some time later this entire amount was returned to them. He does not know from whom it came. He cannot tell

whether the later payment was a dividend, but the entire amount was returned to them. He received the check for that exact amount. He does not know what it was for (Kline, II, 186-187).

Mr. Baker became advised that the case had been settled about May, 1935, and was familiar with the general terms of the settlement. His recollection of the settlement is that the policyholders were to receive 20 per cent and the companies the remainder, out of which expenses were to be paid (Baker, II, 218-219). He was familiar with the rate litigation pending in the federal court so far as the accounting records are concerned (Baker, II, 218). Mr. Henry and the president, Mr. Kelsey, are dead (Baker, II, 219). Mr. Baker does not think anybody in his company knows anything more about this controversy than he knows. It was handled largely by these two officers who are now dead. They did not discuss it with Mr. Baker or impart any information to him that he has not detailed here, and he has told all that he knows about it. He knows of no other man in the company that knows anything additional (Baker, II, 220).

Mr. Baker is not familiar with the circumstances that led up to the drawing of the check (Exhibit 172). The payment of the money to C. R. Street, agent, was frequently talked about in the office. The only thing that he can recall in regard to that check is that Mr. Henry instructed them to charge it to Missouri impounded premiums on the books. Mr. Henry did not tell Mr. Baker who had requested the check and Mr. Baker did not know what the money was paid for (Baker, II, 219). Mr. Baker did not personally enter the record of the issuance or the payment of the check on the records of his company (Baker, II, 219).

GROUP FIFTY-THREE.

This company has a Western department, but it is not in Chicago. It is handled from the home offce. For the sake of convenience they divided the United States and Canada up into regions, and they have what they call the West (Ewing, III, 30). The Missouri rate litigation was handled out of this company's home office. Its business is conducted throughout the United States from the home office. It has no so called Western department (Safford, III, 43). Mr. Safford knew about the pendency of the Missouri rate litigation (Safford, III, 43). Mr.

Safford thinks that he probably is the man from his company with the most knowledge concerning the Missouri rate litigation. He first heard about a proposed compromise of the case in May, 1935 (Safford, III, 43). Mr. Safford first heard about a proposed compromise of the case through the Hartford, 1935, meeting (Safford, III, 43).

By designating Mr. Street as chairman in the check (Exhibit 254, III, 49), Mr. Safford intended the designation as chairman of the Subscribers Actuarial Committee. The Subscribers Actuarial Committee was handling this litigation on behalf of the Travelers and had handled it throughout its entirety with Mr. Safford's knowledge and consent. Most, if not all, of the rate cases in the West were handled by the Subscribers Actuarial Committee. Mr. Safford thinks that his company asked the committee to take charge and handle the litigation. That is his recollection. He does not recall whether his company did it individually or through some other organization like Missouri Inspection Bureau (Safford, III, 50). He never wrote any letter, sent any telegram, had any telephone conversation or any personal conversation with Mr. Street, asking him to handle the Missouri litigation or to have the Subscribers Actuarial Committee handle the Missouri litigation. When Mr. Safford said that the litigation was being handled by the Subscribers Actuarial Committee it was assumption perhaps. He was just assuming something without knowing anything about it (Safford, III, 72).

Mr. Ewing had heard nothing about the compromise prior to the time Mr. Safford reported to him. He had never heard it discussed in any way and did not know any negotiations were going on (Ewing, III, 27). Mr. Ewing had nothing to do with the Missouri rate litigation before this compromise matter came up. He was not handling it. Mr. Safford, prior to reorganization of the official staff of their company, was manager of their Western department. This subject being in the State of Missouri, was a part of the Western business and Mr. Safford gave it his personal attention (Ewing, III, 30).

If Mr. Safford has the dates correctly in mind, it was in the early part of February, 1936, that the Subscribers Actuarial Committee advised that the decree had been handed down and that a settlement of the case on an 80-20, 50-30 basis had been made (Safford, III, 57). Mr.

Ewing must have read the circular letter of the Actuarial Committee in which the terms of the settlement and decree were set out fully. Mr. Safford must have shown it to him, but he has no definite recollection of it (Ewing, III, 29).

Defendant's Exhibit 255 (III, 53) is a memorandum from Mr. Safford to Auditor Flynn telling him the $2,000.00 check was to be charged to "legal expenses," upon advice from Mr. Street to that effect.

Defendant's Exhibit 256 (III, 56) is a memorandum from Mr. Safford to Auditor Flynn, dated February 26, 1936, and is as follows:

> "Referring to the check issued on May 3, 1935 in the amount of $2,000.00 to C. R. Street covering advance for legal expense, I was recently informed that repayment of this advance would be made to us within a reasonable length of time, and suggest that you pend the file sixty days.
>
> It may take longer than that before the general expense in connection with the case involved is allocated, but you may be assured that when our proportion of the expense is billed to us that in some manner not yet decided upon we shall receive credit for the advance already made."

Asked how he happened to say, "informed that repayment of this advance would be made to us within a reasonable length of time," Mr. Safford said he had been advised of the 80-20 compromise by Subscribers, and he assumed that because the case was coming to a close, they would be reimbursed for the sums they had paid through Mr. Street, and Mr. Safford was giving the information to the auditor whom he had previously advised that they would receive what he called "reimbursement" of this money, really a reallocation of it perhaps. Perhaps the memorandum in stating that Mr. Safford was recently informed that repayment of this advance would be made is loosely drawn. As Mr. Safford recalls, the memorandum was drawn shortly after receipt of the letter. Two letters were sent out by the Western Actuarial Committee to the companies and it was just "*ex gratia* information" to the auditor. As to the next sentence in the memorandum, Mr. Safford meant that it might take longer than sixty days before the wind-up of the whole case could be consummated. It was not exactly a refund he was talk-

ing about. He thinks that he used that word ill-advisedly. "Repayment" is the word used. It was a reallocation of that sum total of the first $100,000.00 between the 137 companies. This company had advanced $2,000.00 and their ratable proportion of this $2,000.00 should be charged eventually to all of the 137 companies. Mr. Safford did not know at that time how the allocation of that expense was to be distributed among the 137 companies. He had had no conference that caused him to know the method of making the refund had not yet been decided upon (Safford, III, 57-58). It certainly sounds, as you read the letters, like there was something in his mind that had not been decided upon. He has no further explanation of it. He has no recollection. He knows that he had no conference with anybody about it. He had taken no action, and had not undertaken to determine prior to that how it would be returned to him (Safford, III, 58).

Defendant's Exhibit 257 (III, 59) is a typewritten memorandum dated March 25, 1936, to Auditor Flynn, signed "Robert D. Safford, Vice President." It is as follows:

> "Further to my memorandum of February 26, 1936, referring to the check issued on May 3, 1935 in the amount of $2,000.00 to C. R. Street, covering advance for legal expense incident to the Missouri Rate Case in the Federal Courts, I have been advised that our charge for legal expenses up to May 1, 1937, amounts to $8,738.21. Having advanced $2,000.00 last year, there is a balance due of $6,738.21.
>
> Will you please let me have check today in that amount, payable to C. R. Street, agent?"

There is a handwritten endorsement on the memorandum over the initials of Mr. Flynn as follows:

> "Chg. legal Exp. fire."

There is a pencil endorsement on the memorandum dated "3/25/36" over the initials of Mr. Flynn as follows:

> "Premium transmission in connection with this item can be found in Mr. (*illegible*) file."

Mr. Safford got the information that this company's charge for legal expenses up to May 1, 1935, amounted to

$8,738.21 from Mr. Ewing. Mr. Ewing said he got the information the preceding day from Mr. Erskine over the telephone (Safford, III, 60).

Defendant's Exhibit 258 (III, 62-63) is composed of four pieces of paper pasted together. Each was apparently a separate memorandum. One piece of paper is dated March 24, 1936, and bears the words "for Vice-President Ewing." The memorandum is dated March 24 and is as follows:

> "Mr. Douglas Erskine telephoned me this afternoon at 4 o'clock advising that he was mailing to us tonight a check in the amount of $19,224.06/100, representing 11% (eleven) of our impounded Missouri premiums as of May 1, 1935 - said premiums being $174,764.18.
>
> He asks that we remit in care of Mr. Paul Haid our check in favor of C. R. Street, Agent, in the amount of $6,738.21 - - being 5% of our impounded premiums amounting to $8,738.21, less the $2,000.00 we have already remitted - -"
>
> E.E. 3/24/36 - -
>
> Travelers Fire Ins. Co.
>
> 19,224.06 19,224.06 174,764.18 174,764.18 8,738.21
>
> "5% Impounded Prems 8738.21
> Previous payment 2000.00
> Balance $6738.21
> Check to C. R. Street agent to be sent here"
>
> $8,738.21
> Our chk. 5% of Impounded Prems - -
> C. R. Street, Agt-
> less 2000.00 -
> Missouri Rate Case -
> Trav- - $19224.06
> 11% Impounded Prems
> May 1, 1935
> 174,764.18 Imp. Prem."

As Mr. Safford reconstructs these little notes, Mr. Erskine called Mr. Ewing on the telephone evidently at 4 o'clock in the afternoon and from these little slips, Mr. Ewing put down the amounts and these short memoranda and then through the memoranda, "Mr. Douglas Erskine telephoned me this afternoon at 4 o'clock, advising that he was mailing to us tonight a check in the amount of $19,224.06 representing 11 per cent of our impounded Missouri premiums as of May 1, 1935, said premiums being $174,478.18, he asks that we remit in care of Mr. Paul Haid our checks in favor of C. R. Street, Agent, in

the amount of $6,738.21 being 5 per cent of our impounded premiums, amounting to $8,738.21, less the $2,000.00 we have already remitted. E.E. 3/24/36." Then the next day, in an envelope addressed to Mr. Ewing was this slip that Mr. Safford attached to the file at that time, received by Mr. Ewing on May 25, 1936, with this memorandum, and this in a long strip, "Travelers Fire Ins. Co." the amounts, with a check for $19,224.06 (Safford, III, 64).

Exhibit 258 was not included in the federal file given to Mr. Milligan of Kansas City by Mr. Ewing, because the exhibit was in Mr. Safford's file and he was on the Pacific Coast at the time that Mr. Ewing wrote his letter. When transmitting his letter, Mr. Ewing had no recollection of the existence of this memorandum. He had entirely forgotten it. Mr. Safford refreshed Mr. Ewing's memory about it two or three days ago when it was made known to them that this inquiry was going to be conducted in Hartford (Safford, III, 61). At the time they received the request for this data from Mr. Milligan, Mr. Ewing undertook to accumulate the data in conjunction with their auditor who had issued the checks and received the moneys, all under the instructions of Mr. Safford. Mr. Ewing went to Mr. Safford's office and searched for his file, and found a file, and it was from that and the data from that, that Mr. Ewing sent to Mr. Milligan; but it appears that the pencil memorandum that Mr. Ewing had written Mr. Safford was in a portion of Mr. Safford's desk to which Mr. Ewing had no access, and Mr. Ewing did not find it (Ewing, III, 28).

In connection with Exhibit 258, Mr. Ewing remembers that he received a long distance telephone message from Mr. Erskine, who is Secretary of the Insurance Executives Association, in March, 1936 (Ewing, III, 27, 29). Mr. Erskine advised him that they were sending the next day a check for 11 per cent of their impounded premiums, giving Mr. Ewing the figures, and he said he wanted a check for 5 per cent, made payable to C. R. Street, agent. Mr. Ewing made a memorandum of that conversation, as his secretary had left for the day. He turned the memorandum over to the accountant to check the figures to see if they were correct. The accountant reported that they were correct, and the next day Mr. Ewing turned the matter over to Mr. Safford to receive his attention. Mr. Ewing has no definite recollection of his telephonic conversation with Mr. Erskine (Ewing,

III, 27-28, 29). He did not even remember that he had such a conversation, but has refreshed his recollection from the memorandum which he wrote Mr. Safford (Ewing, III, 28). Mr. Ewing had an assumption in his own mind, but no definite recollection as to what Mr. Erskine told him about the purpose of the money (Ewing, III, 28). He knew that 11 per cent check came from the impounded premiums and was familiar with the fact at the time it was published what the distribution of the sum was going to be. It was 50, 30 and 20. He was not definite as to the date of the federal court decree (Ewing, III, 29). He must have known that 30 per cent had been allocated for the payment of expenses when he had the conversation with Mr. Erskine, but he has no definite recollection of it. He does not know why he did not ask Mr. Erskine the details of what the 5 per cent contribution was for, except that the matter was turned over to Mr. Safford and he was handling it, and Mr. Ewing's assumption must have been that Mr. Safford was thoroughly familiar with it. He does not recall that he discussed with Mr. Safford the reason for the assessment of 5 per cent. He has no recollection at all about that (Ewing, III, 29).

Defendant's Exhibit 259 (III, 65-66) is a carbon copy of a letter dated March 25, 1936, written by Mr. Safford to Mr. Erskine. The letter states that flood conditions interfered with "giving this matter earlier attention," and then discusses flood conditions in Hartford. Except for such parts of the letter, it is as follows:

> "Esmond told me of your conversation late yesterday afternoon and in doing so acquainted me with details regarding the matter that I had had in charge, and immediately the office was open this morning, I got in touch with those necessary to the accomplishment of your desires."

There is a memorandum or postscript on the bottom of this letter (Exhibit 259) as follows:

> "Check payable to C. R. Street, agent for $6,-738.21 enclosed before mailing.
> R. D. S."

The postscript is a memorandum made by Mr. Safford (Safford, III, 65). "Esmond" is Mr. Ewing (Safford, III, 66).

Mr. Erskine was a personal friend of Mr. Safford. He had talked with Mr. Erskine on the telephone three, four or five days previously, and Mr. Erskine had asked something about the flood conditions. As Mr. Erskine was only an instrument in this whole transaction, Mr. Safford turned his letter more or less into a personal letter, simply outlining in the opening paragraph the transmittal, and Mr. Safford told Mr. Erskine about flood conditions in Hartford (Safford, III, 64). Commenting upon his letter, Mr. Safford said that it was silly phraseology; that he did not know and could not tell why he wrote the phrases; that it was ridiculous language; that the phrase "I got in touch with those necessary" is a silly way of expressing it. He got in touch with the auditor and asked him for the check. "That is all there is to it." He cannot tell why he used the phrase, "necessary to the accomplishment of your desires." He hardly considered that he was making a record of the transaction when he wrote that letter. The fact that he was writing a personal letter to a personal friend unquestionably had an influence on the way he phrased it. As a matter of fact, Mr. Erskine was only an instrument through whom the whole transaction was handled as Mr. Safford understood it (Safford, III, 66-67). Mr. Safford assumed that it was all in connection with this legal expense. He could not tell "to save his soul" why he did not say that in his letter (Safford, III, 66).

The only reason why it was done by that method that Mr. Safford can give is that he was an instrumentality in a way, through which Mr. Erskine received the check to turn over to Mr. Haid to turn over to Mr. Street, and it was at a time when the flood conditions were high, and he wrote a personal letter to "Doug," or Mr. Erskine. It had been stated in the letter from the Subscribers Actuarial Committee that 30 per cent of this fund had been allocated for the purpose of paying the general expense, and Mr. Safford knew the approximate amount of impounded premiums of all the companies in Missouri. It was in excess of $9,000,000.00. Mr. Safford knew that 30 per cent, or in excess of two and one-half million dollars, was available for the payment of expenses, and it was a proper assumption that when they got a refund of 11 per cent that the 30 per cent fund was more than adequate to pay attorneys' fees. He knew that Folonie and Street were trustees (Safford, III, 67-68).

Mr. Safford was asked if it did not strike him as very strange procedure that the matter of attorneys' fees would be taken out of the hands of trustees and put in the hands of Mr. Erskine, and that his company would be called upon to refund 5 per cent of those impounded premiums, not to the trustees, but to C. R. Street, agent. He repeated that Mr. Erskine never appeared in that connection. It was to Mr. Street. Mr. Erskine was simply an avenue through which that transaction was made. As Mr. Safford understood, whatever may be Mr. Erskine's status generally, he was doing the work of an office boy in this particular transaction (Safford, III, 68). Mr. Safford did not send the remittance to C. R. Street, because they were asked through Mr. Haid's office—to send it to him so that collectively all of those checks would go on to Mr. Street. Mr. Safford thought nothing of it when he did so (Safford, III, 68).

Certainly neither Mr. Ewing nor, so far as he knows, anybody in the Travelers Fire Insurance Company, ever authorized Mr. Street to, or knew that Mr. Street had paid out any money for bribery or in order to influence the action of any person, official or otherwise in procuring this compromise of Missouri rate litigation (Ewing, III, 30). Neither Mr. Safford nor anybody in the Travelers Fire Insurance Company, so far as Mr. Safford knows, has authorized Mr. Street to pay, or knew that Mr. Street had paid or had any reason to believe that he had paid any money as a bribe to any public official or any other person to get them to agree to this so-called compromise of May 18, 1935, and the decree of February 1, 1936. Mr. Safford had no knowledge or suspicion that that was going on. Mr. Safford had known Mr. Street all his business life and Mr. Street is just beyond reproach in his estimation. He cannot even yet believe that Mr. Street did what he evidently did do. He has known Mr. Street, certainly for thirty years (Safford, III, 72).

GROUP FIFTY-FOUR.

The Western Fire Insurance Company is located at Fort Scott, Kansas (Duboc, III, 255). This company has had a suit pending since 1930 in the federal court in Kansas City relating to a rate controversy in Missouri similar to the suit pending in relation to the same matters by some 136 other companies (Duboc, III, 255). At the present time this company's only attorneys in the case are Douglas Hudson, of Fort Scott, and Mr. Chester, of

Kansas City, Missouri. In 1935 its attorneys were Mr. Folonie of Chicago and Mr. Berger in Kansas City (Duboc, III, 255). Mr. Duboc had general knowledge of the Missouri litigation (Duboc, III, 255) and handled that litigation on behalf of his company (Duboc, III, 256). This company is a subscriber of the Subscribers Actuarial Committee and of the Missouri Inspection Bureau (Duboc, III, 255). Mr. Duboc knew that the Subscribers Actuarial Committee, of which Mr. Street was chairman, represented all of the companies in connection with the litigation, and he made no objection to that on behalf of his company (Duboc, III, 256). Mr. Street practically handled the litigation exclusively (Duboc, III, 261).

The Subscribers Actuarial Committee was the committee of which Mr. Street was the head (Duboc, III, 263). It is a committee of the whole, its men representing all of the companies doing business with the various inspection bureaus (Duboc, III, 283). They function as the Subscribers Committee, and no doubt at those meetings there are executive committees appointed, but Mr. Duboc never followed their deliberations. He knows there were some six or seven or eight men who composed the Subscribers Actuarial Committee, but he does not know who appointed them. His company just knew they were in a position of authority and accepted their edicts (Duboc, III, 284). This company paid the assessments of the Missouri Inspection Bureau and Mr. Duboc knew they were to cover the expenses of this litigation among other things (Duboc, III, 256). Mr. Duboc first learned of the settlement, or proposed settlement, through the newspaper. He has no record of the date, but it was in the early part of 1935. The newspapers purported to give the terms of the settlement. This company may have received a circular letter from the Subscribers Actuarial Committee telling of the settlement and enclosing a printed circular giving the terms thereof. Mr. Duboc has not found any such letters in the files. The only record he could find in the files was the letter from the Missouri Inspection Bureau, dated November 18, 1935. He presumed the company received an earlier letter. If so, it has been misplaced and he could not find it. He could not find the letter of February, 1936, setting out the details of the decree which was rendered by the court, but he thinks his company received such a letter (Duboc, III, 256-257). Mr. Duboc never attended any meeting where this litigation or the settlement was discussed

(Duboc, III, 262). From May, 1935, on, Mr. Duboc was familiar with the terms of the settlement agreement which was later, in effect, incorporated in the federal decree (Duboc, III, 257).

Defendant's Exhibit 303 (III, 259) is a letter dated March 30, 1936, from C. R. Street to Ray B. Duboc, President. It is as follows:

> "I enclose check for $3,732.60 which is 11% of the amount of your impounded premiums in Missouri as of May 1st.
>
> Will you please let me have your check for $1,693.63, being 5% of your impoundments of $33,932.74- -expenses.
>
> Make your check to C. R. Street, Agent, and send to me under personal confidential, just as has been done by *all* others.
>
> Hope to see you at the meeting next month, when a full statement on this situation will be made."

There are handwritten figures on the letter: first, calculating 11 per cent of the $33,932.74: second, calculating 5 per cent thereof, and third, indicating that check No. 8029, dated "4-2-36" had been issued with the notation "Chg. a/c 414 (Mo. Imp. Comm.)."

The check was issued in accordance with the request contained in the letter. Mr. Duboc had no other request than that. He consulted no one about issuing the check. He had no information except that contained in the letter. He finds no letter transmitting the check to Mr. Street in the file. He presumes there was a formal transmittal memorandum (Duboc, III, 260). He knows that from May, 1935, on, that 30 per cent of the impounded premiums was to be held by Mr. Street and Mr. Folonie as trustees for the payment of expenses of the litigation (Duboc, III, 260).

There were so many ramifications to this litigation that they were never able to follow it in detail and they just did as they were told. Mr. Duboc did not have any opportunity to exercise any independent judgment on the matter. His company had objected previously to assessments, but without any result, and it just became a custom to pay what they were told to pay. This was not in particular the type of assessment that had been theretofore levied, but there had been no uniformity.

They assessed sometimes one way and sometimes another. All the assessments up to that time had been through the Missouri Inspection Bureau, but in a variety of forms. Sometimes they were loaded up on regular assessments; sometimes there were special assessments. There was no distinction as to which phases of litigation they covered. This company was not involved in all the phases of litigation, but it was called on to pay expenses in phases that it was not interested in. They had previously protested without result, and had just become reconciled to pay their share of the bill without any recourse. On all previous assessments there had been notifications and they figured that the Missouri Inspection Bureau was merely the agent of the Subscribers Bureaus, because they had said so; but the Missouri money went through the hands of the Missouri Inspection Bureau (Duboc, III, 260-261). It did not strike Mr. Duboc as unusual that Mr. Street desired to collect this money himself, as agent, not as trustee (Duboc, III, 261). Mr. Duboc did not take up the payment of this money to Mr. Street with his Board of Directors. He did not specify this payment. He reported the total expenses of litigation (Duboc, III, 262).

Defendant's Exhibit 304 (III, 265-280) is a bill to this company from the Missouri Inspection Bureau for the assessment on its fire and tornado premiums in the Missouri for the year 1929, payable to 1930 (Duboc, III, 263).

Mr. Duboc did not understand the Missouri Inspection Bureau assessments covered all the expense, but only that they were to apply upon the expense. He had received communications from the Subscribers Actuarial Committee relative to the assessments being paid by the Missouri Inspection Bureau (Duboc, III, 262-263). Mr. Duboc said that Defendant's Exhibit 304 (III, 265) shows that the total bill consisted of an assessment of $743.98 on the general business, and tornado premiums plus an increase of 1-4 of this charge with the notation that the increased basis is necessary to defray litigation expenses occasioned by rate orders of the insurance commissioner. The bill is dated March 4, 1930.

There is another bill (III, 266) for February 10, 1930, showing a special assessment of $182.58, being one-half, of the general farm and tornado premium to apply on account for litigation expenses. There is a letter

(III, 267) dated February 7, 1930, to the companies from the Subscribers Actuarial Committee as follows:

> "In order that we may be in a position to meet the bills which have been received covering the expenses incurred during the year 1929 in connection with the rate litigation in Missouri, we have recommended to the Missouri Inspection Bureau that they levy a special assessment at the rate of one half of 1% (.005). Bills for this assessment will be sent you this week."

There is another bill (III, 268) dated September 30, 1929, for a total of $743.98 assessed on the general business and the tornado premiums with a notation that the increased basis is necessary to defray litigation expenses occasioned by rate orders of the insurance commissioner.

There is another notice (III, 269) dated July 1, 1929, which is in all respects the same as the notice dated September 30, 1929, except as to the date.

There is another notice (III, 270) dated April 16, 1929, which is in all things like the notice dated September 30, 1929, except as to the date.

There is another notice (III, 271) dated April 24, 1929, of an assessment on automobile premiums in the sum of $38.82.

Defendant's Exhibit 305 (III, 274) is a bill from the Missouri Inspection Bureau for the assessment of this company's Missouri fire and tornado premiums during the year 1933. It shows the total assessment on general business and tornado premiums in the sum of $949.04 with a credit of $711.78, leaving a balance due of $237.26. The credit is not explained.

There is another notice of assessment (III, 275) dated October 1, 1933, showing a total assessment on general business and tornado premiums of $949.04 with a credit of $474.52, leaving a balance due of $474.52. The credit is not explained.

There is another notice of assessment (III, 276) dated July 1, 1933, showing a total assessment of $949.04, with a credit of $237.26, leaving a balance due of $711.78.

There is another notice of assessment (III, 277) dated May 1, 1933, in the sum of $70.45 on the automobile premiums.

There is another notice of assessment (III, 278) dated April 1, 1933, showing a total assessment of $949.04 on general business and tornado premiums with a handwritten notation thereon that 1-4 equals $237.26.

The regular assessments made by the Western Inspection Bureau and the special assessments which were denominated as in connection with the Missouri rate litigation were:

In 1928, 2.25 per cent.

In 1929 a regular assessment of 2.25 per cent and two special assessments of 1 per cent each.

In 1930 a regular assessment of 2.25 per cent and a special assessment of one-half of 1 per cent.

In 1931 a regular assessment of 2.25 per cent and a special assessment of .9 per cent.

In 1932 a regular assessment of 4.5 per cent.

In 1933 a regular assessment of 2.05 per cent.

In 1934 a regular assessment of 2.08 per cent.

In 1935 a regular assessment of 3.00 per cent.

At the time when the regular assessment was raised to 4.5 per cent, Mr. Duboc had his auditor write a letter of protest. The answer received to that protest is Defendant's Exhibit 306 (Duboc, III, 281).

Defendant's Exhibit 306 (III, 281-282) is a letter under the letterhead of Missouri Inspection Bureau, signed by Waterworth and Terry, managers. The letter is dated September 2, 1931, and is addressed to Western Insurance Company. It is as follows:

> "Replying to yours of the twenty-second, the very substantial increase in the assessment of the Bureau Subscribers for this year is occasioned by the current premiums of the companies being approximately only 50% of the amount for previous years. The amount of the Bureau expense remains practically constant, in addition to which, there are, of course, very substantial expenses to be met currently for rate litigation expenses. The small amount of premiums necessitates a higher percent of assessment to provide the necessary income for the operation of the Bureau."

Mr. Duboc never had at any time any accounting concerning any of these assessments as to how the funds

raised therefrom were actually allocated and expended by the Bureau, or by the Subscribers Actuarial Committee. The letter (Exhibit 306) is an attempt to explain why the regular assessments were increased from 2.25 per cent to 4.5 per cent. There was an additional bill rendered that same year concerning which there was correspondence which explained that this company had been reporting only its net premiums after deducting the amount impounded with the custodian, and they were told by the bureau that they should have returned the gross amount, and the Bureau billed them for the additional assessment on the impounded premiums for that year (Duboc, III, 282).

GROUP FIFTY-FIVE.

The Seaboard Fire and Marine Insurance Company, a member of this group, was in the state rate litigation (F. Martin, II, 190).

The Actuarial Committee handled the litigation in behalf of this company. Mr. Frank Martin knew Charles R. Street and knew that he was chairman of that committee, actively in charge of it himself, very much. So far as Mr. Martin was concerned, Mr. Street was in complete charge. Mr. Martin understood that during 1935 and 1936 (F. Martin, II, 190). Mr. Martin knew something about the negotiations for a compromise in the spring of 1935 while the negotiations were pending. It would be hard for him to say from whom he got that information. He thinks it was general knowledge. He had no information as to the particulars, but simply knew that a settlement was being negotiated (F. Martin, II, 190 191). He does not recall that he was called upon for any funds in 1935 in connection with this compromise (F. Martin, II, 191). He did not attend any meetings in connection with the compromise and never came to the office of the Insurance Executives Association in connection with the compromise (F. Martin, II, 191). He recalls no information from the Executives Association that this compromise was being negotiated. He does not recall anything about a fund raised about the time of the compromise and in connection with it in 1935. He cannot say that he afterwards heard that the $100,000.00 was raised in the spring of 1935 in connection with the compromise. With two years disassociation in insurance affairs Mr. Martin has just forgotten all insurance company opera-

tions at that time (F. Martin, II, 191). He knew that after the compromise was effected a federal court order was made, substantially carrying out the terms of the compromise, and he undoubtedly received a circular letter from the Actuarial Committee giving the terms and provisions of it, which he would say was in the early part of 1936 (F. Martin, II, 191). Mr. Martin presumes that the fact that 30 per cent had been set up in the hands of trustees for the purpose of payment of expenses was included in the report from the Actuarial Committee, and if it was, he knew it because he read the report. He knew that 20 per cent went to the policyholders (F. Martin, II, 192). Shortly after the compromise he received some forty-five to fifty per cent of the impounded funds from the custodian (F. Martin, II, 191). He received the check for 11 per cent from the trustees. He does not recall whether it was out of the 30 per cent fund, and does not recall from whom he received the 11 per cent check, except that he received it from Mr. Erskine, Mr. Haid's assistant (F. Martin, II, 192). Mr. Martin received the 11 per cent check in his office at 90 John Street. Mr. Erskine made a personal call on him and delivered the check in person; but as he recalls, Mr. Erskine told him very little. Mr. Erskine merely said it was money from the impounded funds of the Missouri case, and at the same time asked for a check for 5 per cent of that impounded fund for expenses. Mr. Martin does not know what expenses. He thinks he asked Mr. Erskine what expenses, but does not think Mr. Erskine told him (F. Martin, II, 192). He thinks Mr. Erskine said that he did not know what it was for (F. Martin, II, 192, 193). He does not recall whether Mr. Erskine said there would be an accounting for the check at a later date and he does not know whether there ever was an accounting for it, because after his services terminated at the end of that March, he does not know what the final thing was (F. Martin, II, 195). Then Mr. Martin marked it down, "legal fees," in connection with Missouri impounded premiums. He marked it legal fees because Mr. Erskine did not know what it was for, except that it was to go to Charles Street and Mr. Martin assumed it was for legal fees, or he may have so assumed. He thinks he assumed this because Mr. Erskine did not know. That is his recollection (F. Martin, II, 193). Mr. Martin gave him the check, and then Mr. Martin made a requisition for the check (F. Martin, II, 192). It is their custom and practice to

do this when they are paying it to a committee or individual in whom they have confidence (F. Martin, II, 193).

Defendant's Exhibit 173 (II, 194) is the requisition which Mr. Martin caused to be made at the time he issued the check (F. Martin, II, 193). Said exhibit is the requisition for check of Yorkshire Insurance Company Ltd., dated 3-24-36, to the order of C. R. Street, Agent, for $2,455.62 in payment of legal fees in connection with "Mo. Imp. Prems." It recites that the requisition is made by J. Nicholas and approved by "J. V."

Defendant's Exhibit 174 (II, 196) is a typewritten statement that the payment represents the aggregate participation of The Yorkshire Insurance Co., Ltd., $1972.93, The London Provincial M. & G. Insurance Co., Ltd., $482.69.

The check (Defendant's Exhibit 174, II, 196) is 5 per cent of their impounded premiums. Mr. Martin delivered this check to Mr. Erskine in person. He thinks Mr. Erskine told him there was immediate need for the check. Mr. Erskine wanted it that day; but did not, that Mr. Martin recalls, say why it was urgent that he have it (F. Martin, II, 195). Mr. Martin understood that Mr. Erskine's personal call was actuated by the urgent request from Mr. Street "that this company delivered the check to us and get back a 5 per cent check" (F. Martin, II, 197). If there had been no urgent request for the check which Mr. Martin made to C. R. Street, agent, Mr. Martin would not necessarily have found out what it was for before issuing it in the ordinary course of business. Any request that came from Charles R. Street would have been drawn for any purpose (F. Martin, II, 195). If any auditor of a superintendent of insurance asks him what the payment to Mr. Street was for, Mr. Martin expects to tell him it was for litigation expenses.

"Q. You did not know that?

A. We so marked it on our voucher, on our requisition.

Q. I know you marked it, but you did not know that.

A. We assumed it was.

Q. If they had asked you for the supporting evidence you wouldn't have had it?

A. No, sir.

Q. If they had asked you what you know about it you would have said, 'Nothing.'

A. Yes."

It did not occur to Mr. Martin that he might get himself embarrassed by having an entry there that any insurance auditor in the United States could ask about which he would not be able to explain. He knows now that that is a fact, but he did not think anything about it at the time (F. Martin, II, 198). Ordinarily all of these companies' outgoing items are supported by some evidence to indicate what the transaction is, whether they are dealing with agents or with somebody else. If any examiner representing any superintendent of insurance asks what it is, they can usually refer to the transaction and tell him exactly what it is; but they did not happen to know, other than what they assumed. They had a supporting document from Mr. Street, "Missouri Litigation"; it was from the man that was handling the matter generally. From year to year they had been paying for premium on their injunction bond in that very suit, one of the expenses of litigation which was paid directly by the companies. Mr. Martin does not recall how they issued their checks for the injunction bond; his office records are no longer accessible to him (F. Martin, II, 199). Mr. Martin knew that the litigation existed, and he had gotten back what he thinks must have been about $30,000.00 before he paid out this $2,455.00 to Mr. Street. In getting this $30,000.00 he paid out something less than 10 per cent to Mr. Street, and he put it on the books as "legal expenses" or "legal fees" (F. Martin, II, 198-199). Mr. Martin's services terminated March 31, 1937, and from March 24, 1936, the date of issuing the check, to the termination of his employment, he made no inquiries as to what the check had been issued for. He got an acknowledgment from C. R. Street, agent, dated March 31, 1936, reciting receipt of the check, "Account Missouri litigation expenses." He cannot think of any other knowledge he had concerning the transaction. He had no knowledge concerning this check other than what he has stated. Mr. Erskine has called him personally at his office about other matters, but not in connection with the Missouri rate litigation (F. Martin, II, 197).

No officer of Mr. Martin's company authorized the payment to Mr. Street of any money for the purpose of using it to pay any public official or other person to bring about the compromise settlement, and no officer

knew that Mr. Street used any money for such purpose (F. Martin, II, 197).

GROUP FIFTY-SIX.

Crum & Forster is a corporation. It does not have a charter to write insurance. It is licensed as agents, but not as to underwriting. It does not, in its own name, write insurance (Parsons, III, 318). It is a managing, or general, agent, for a group of companies, namely: British American, North River, United States Fire, Westchester Fire, Western Assurance Company and the United States Merchants and Shippers. The latter was absorbed by the Westchester in 1932 and was so merged; this was the way it was in 1935 and 1936 (Parsons, III, 318; Wyatt, II, 162). The United States Merchants and Shippers were in during part of the period of impoundments, and had some funds in the Missouri impoundment rate case (Wyatt, II, 162). Crum & Forster have the complete underwriting and financial management of these companies. In some instances the officers of the corporation have certain duties as part of the Crum & Forster organization; so that regardless of the corporate form, Crum & Forster, with the executives of the corporation, actually operate and have complete management of those companies (Parsons, III, 318-319). F. M. Gund, the Western department manager, was in active charge of the Missouri litigation for this group. Mr. Gund lives at Freeport (Wyatt, II, 163).

Mr. Wyatt did not attend the insurance executives meeting about May 2, 1935, in Paul Haid's office, and no one reported the substance of that meeting to him. At that time he was not aware of the fact that some large portion of $100,000.00 was raised in connection with the Missouri rate litigation through the efforts of Mr. Street and Mr. Haid. He heard about that when Mr. Parsons asked him to have a check drawn for $5,000.00 on May 2, 1935 (Wyatt, II, 163).

There was a little inaccuracy in the percentage in the state cases which was subsequently corrected (Wyatt, II, 167). Mr. Wyatt assumes that Mr. Street was chairman of the committee that was handling this litigation for his companies. They brought, conducted, and handled the suit for his companies, with his authority (Wyatt, II, 184). Mr. Parsons understands it now and understood it at the time, the Subscribers Actuarial Committee

had active charge of the litigation for the Crum & Forster Company (Parsons, III, 319). Mr. Parsons cannot testify to it, but he assumes that the bills in connection with the litigation were rendered through assessment made by the Missouri Inspection Bureau (Parsons, III, 319). Mr. Parsons knew that a compromise was effected, but does not think he ever took the trouble to find out the provisions of the compromise. He never even looked into it. He heard that they got approximately 20 per cent or something of that kind. His companies were totally ignorant of this whole transaction. He knew there had been a settlement and that they were going to get approximately "so much," but he never went into the details of it. He did not know that 30 per cent had been set aside for the payment of legal expenses. Mr. Wyatt handled the details of the transaction (Parsons, III, 322). Mr. Parsons knew nothing about it. He did not even know that the federal court decree was entered in February, 1936. He undoubtedly heard of it, but he did not know anything about the details of it (Parsons, III, 322). Mr. Parsons talked the matter over with Mr. Wyatt in a general way since it became generally known. He never discussed it with Mr. Wyatt at all except to get the idea that there had been a settlement of about "so much," and he never went into it (Parsons, III, 323). Mr. Wyatt had no knowledge about negotiations leading to a settlement of the Missouri rate litigation at the time of those negotiations (Wyatt, II, 162). Mr. Wyatt supposes he got the knowledge of the distribution authorized by the order of the federal court soon after the order was issued (Wyatt, II, 176).

Defendant's Exhibit 170 (II, 170) contains a memorandum in the handwriting of Paul Haid (Wyatt, II, 169). It is as follows:

"Check to C. R. Street, Agent, Amt.	$11,419.41
Previous payment	5,000.00
Balance	$ 6,419.41."

In the handwriting of Mr. Wyatt (Wyatt, II, 169) there is added to the memorandum the following: "To be advanced by C. & F. until repaid by companies. H. J. W."

Defendant's Exhibit 171 (II, 172) is an office copy of the check (Defendant's Exhibit 170, II, 170).

Paul Haid called Mr. Wyatt on the telephone and told him he was sending over some checks and a memorandum, to get the amount of money that was called for by the memorandum, and that he would like to have that check that particular Saturday morning. Mr. Wyatt understood the figure on the memorandum, $11,419.41, to be the legal expense charge. It was 5 per cent of all the Crum & Forster impoundments (Wyatt, II, 173-174, 176). Mr. Wyatt talked to Mr. Haid when he called for the 5 per cent check and understood it to be for account of legal services, legal expenses (Wyatt, II, 174, 176). The previous payment, $5,000.00, mentioned on the memorandum, refers to the first check given in 1935, and Mr. Wyatt understood he was to have credit for that (Wyatt, II, 174). Mr. Wyatt does not recall what further explanation Mr. Haid made as to the use of that check. He does not think Mr. Haid mentioned that the other companies were paying in the same proportion. Asked what, if any, reason occurred to him why Mr. Haid did not write to him; so that he would have some correspondence reflecting the transaction, Mr. Wyatt replied that he had the utmost confidence in Mr. Haid, and when Mr. Haid sent that memorandum over, he had no occasion to question it. That is the reason he wrote the check and participated in it to the extent that he did. Mr. Parsons was not in that morning (Wyatt, II, 176-177). Mr. Parsons had nothing to do with the 5 per cent check (Wyatt, II, 177). What Mr. Wyatt put on the memorandum was, "To be advanced by Crum and Forster until repaid by companies" (Wyatt, II, 174). They said they wanted the amount right now. It would take a calculation to determine how much each company would be charged with, but Mr. Wyatt was going to issue it right now. The only way he could handle it would be to advance it and make the calculation later and then charge it up against the companies after the calculation was made (Wyatt, II, 174-175, 176). Mr. Wyatt did not know at that particular time how much of that charge each company would have to pay (Wyatt, II, 174). It was his own idea that the check was to be advanced by Crum and Forster until repaid by the companies. He could not tell what each one of these insurance companies should pay of that particular amount (Wyatt, II, 174). He issued the check to a different account from the one from which he had received the 11 per cent check (Wyatt, II, 179). He has no knowledge of

what Street and Folonie were going to do with it so far as the accounts were concerned (Wyatt, II, 179).

This manager's companies were paid the 50 per cent of the impounded premiums up to May 1, 1935, provided in the order, and later got a dividend of 11 per cent of their impounded premiums to May 1, 1935, from Street and Folonie, Trustees. Mr. Wyatt thinks the 11 per cent check came in at the same time that the voucher for $6,419.00 came up. It was sent by the same messenger that brought the memorandum (Defendant's Exhibit 170) (Wyatt, II, 176).

The total impounded premiums up to May 1, 1935, of all the companies in the Crum & Forster group was $328,388.27, excluding the companies in the state court. Five per cent of those impounded premiums is $16,419.41 (Wyatt, II, 180).

Mr. Parsons cannot tell and has no idea how much impounded premiums his companies had in Missouri at that time. He imagines the total of $328,000.00 shown by Defendant's Exhibit 168 is correct for this group of companies (Parsons, III, 321). He did not know until recently that about the time they received the 11 per cent they were called upon for an assessment of 5 per cent. It never came to his attention. He did not know until recently that they received a check for 11 per cent of the impounded premiums. Mr. Wyatt handled all that and did not communicate that fact to Mr. Parsons. He did not know and had no information that Crum & Forster had disbursed this 5 per cent, but he has it now. He did not go through his files before he came down here and he has never gone through them since this matter became one of public concern (Parsons, IV, 322-323). He did not give the slightest thought to what legal expenses Mr. Haid meant. He had great confidence in Mr. Haid, the Committee, and Mr. Street (Parsons, III, 320-321). After that check was issued (Defendant's Exhibit 170), Mr. Parsons got no communication from Mr. Street or anyone else explaining this transaction further. He made no further inquiry (Parsons, III, 322).

On behalf of all the companies in his group Mr. Wyatt paid Mr. Street $11,419.41, $5,000.00 less than 5 per cent. Mr. Wyatt was in error when he said that he paid back to Mr. Street 5 per cent of the impounded funds. This $5,000.00 error was never called to his attention (Wyatt, II, 180-181). The total impoundings for

this group was $328,388.00 and 50 per cent of that would be $164,694.00 plus which they had received. That added to the 11 per cent in '36 totals a little over $200,000.00 they received in February and March, 1936. Mr. Wyatt's companies paid back to Mr. Street, including what was paid in 1935, a total of $11,419.41, which is approximately 5 per cent of the cash they were getting in (Wyatt, II, 182). The $11,000.00 was all the money that this group of companies or its manager ever paid back to Mr. Street in connection with the Missouri rate litigation (Wyatt, II, 183).

When the $6,000.00 check was requested, so far as Mr. Wyatt knows, Mr. Parsons knew nothing about it. Mr. Wyatt had that voucher approved by Mr. Junker of Crum & Forster's office, in order to get the two signatures on the check and Mr. Junker signed on assurance from Mr. Wyatt (Wyatt, II, 177). All that induced the issuance of the six odd thousand dollar check, in addition to the memorandum attached hereto, was what was said to Mr. Wyatt by Mr. Haid and what Mr. Wyatt said to Mr. Junker (Wyatt, II, 177). Knowing 30 per cent had been set aside for legal expense, Mr. Wyatt, when asked what had occurred to him the $6,000.00 check could be for, answered that he did not pay much attention to the matter as to whether it was deducted from that sum or whether it called for a special check or what. It never occurred to him, and as a matter of fact, never made any difference; that he got a check from the trustee for 11 per cent and gave a check to Mr. Street, Agent, for 5 per cent (Wyatt, II, 177-178). He knew at the time that 30 per cent of all their impoundments was set apart in the hands of the trustees to pay all legal expenses and other expenses of litigation, with any over-plus to go back to the companies and that the 11 per cent was a sum of money out of the 30 per cent which was not required for expenses at the time they got it (Wyatt, II, 177). Mr. Wyatt received a 11 per cent check from the trustees' fund and issued a check out of their own funds for 5 per cent payable to C. R. Street, agent. He had no idea what they were doing with it or what was going to be done with it. He had no idea why it was made to C. R. Street, agent, except probably to distinguish it from any personal account that he might have (Wyatt, II, 178). No member of the management firm, so far as Mr. Wyatt knows, or of the companies in this group, ever asked Mr. Street to do anything for them in connec-

tion with this litigation in Missouri. When Mr. Haid, or his office, asked them to pay over $11,000.00 to Mr. Street, Mr. Wyatt just paid it as a part of the expenses necessary to get that two hundred odd thousand dollars (Wyatt, II, 183).

"Q. * * * Whose agent was Mr. Street for the payment of this $6,000.00 check that is marked 'Exhibit 170'?

A. I suppose he was acting for the companies.

Q. And that means the companies that you represented?

A. Yes, sir.

Q. You were willing that he should?

A. Well, to a certain extent.

Q. Well, did you put any limitations on him?

A. No, sir.

Q. Then it was to a full extent wasn't it?

A. No, sir. We wouldn't expect him to abuse any authority.

Q. You asked him to take that and use it as he chose, didn't you?

A. No, sir.

Q. What did you expect him to do with it?

A. To use it properly.

Q. And to use it properly, you had that in mind at the time you issued it?

A. No, sir. We did not, but I assumed it.

Q. But you did not try to find out all the particulars of what would require the $6,000.00 check?

A. No, sir" (Wyatt, II, 179).

When they made the payment in March, 1936, they made the check payable to C. R. Street, agent, because Mr. Haid said they wanted it that way (Wyatt, II, 184).

Mr. Wyatt was aware that the total impoundments in the federal cases were a little above $9,000,000.00 and he knew that 30 per cent of that would be more than two and one-half million dollars. He knew that the fund was rich enough that the trustees had just handed back 11 per cent, 11-30 of this 30 per cent, 11 per cent of his company's total impoundments, and that it was out of the 30 per cent. He had no idea what other conceivable expenses Mr. Street might need this money for. There was quite an involved litigation over many years. That is the only explanation he has. No one else in this

office knows anything more about this $6,000.00 check than Mr. Wyatt knows. He assumed full responsibility for the issuance of that check and he just procured Mr. Junker to sign it on the basis that he had approved it (Wyatt, II, 179-180).

Crum and Forster never authorized anyone to pay any sum of money to any public official or to any other person to bring about this May, 1935, settlement or the consent decree in the federal court (Wyatt, II, 182-183).

GROUP FIFTY-SEVEN.

The Underwriters' Grain Association writes a certificate of insurance only on grain in storage. It writes a policy which is participated in by many stock companies. For the sake of impounding, the court permitted a separate impounding account for this association of that portion of their writings represented by companies which had federal court cases. These companies all brought suit, and sixteen and two-thirds percent of their premiums had been impounded, but the particular premiums impounded by the Underwriters' Grain Association were collected and impounded through that association instead of having to break it all down (Lerch, I, 307), referring to explanation at pages 306-307.

The total impoundment of the Underwriters' Grain Association up to May 1, 1935, was $41,419.67 (Lerch, I, 307). Five per cent of that is $2,070.98 (Stipulation, I, 307). In March, 1936, Mr. Lerch received 11 per cent of the amount of the impoundment to May 1, 1935, from the hands of Mr. Street. Mr. Street did not write a letter, but called Mr. Lerch on the phone and asked if he would stop at Mr. Street's office. The amount of the 11 per cent was $4,556.16, and Mr. Lerch called and got the check. Mr. Street did not tell Mr. Lerch what he wished to see him about in the telephone conversation, but just asked him to call in, and when he called in Mr. Street gave him the check for $4,556.16 and asked him to give Mr. Street a check for 5 per cent of Mr. Lerch's impoundments at that date. Mr. Street said that he required that on account of Missouri litigation expenses. That is all Mr. Street told Mr. Lerch. Mr. Lerch did not ask him anything further about it (Lerch, I, 307-308). When Mr. Lerch got the 11 per cent, Mr. Street gave him no assurance at all that that much would not be required for expenses. Mr. Street simply said "I want you to give me

your check for $2,070.98 on account of litigation expenses." Mr. Lerch did not ask Mr. Street for any particulars of the litigation expenses. Mr. Lerch knew what the terms of the decree were. He did not know the details of the various arrangements. He simply knew that Mr. Street was in charge of the litigation in Missouri (Lerch, I, 309). Mr. Street did not tell Mr. Lerch anything about the particulars of what the expenses were for. Mr. Lerch has never found out what they were for. He never did ask Mr. Street (Lerch, I, 313). At that time Mr. Lerch knew that the federal court had entered its decree of February 1, 1936, and that 30 per cent of his total impoundment had been set about to Street and Folonie to pay expenses. It did not excite his curiosity that Mr. Street was calling on him for a 5 per cent check when he had just received 11 per cent out of this 30 per cent, for the reason that they had not received their 50 per cent. They had received part of it. He did not know whether he had received the 30 per cent. He did not know what their expenses were. He understood that the 30 per cent was set apart for the payment of legal expenses and if there should be any balance remaining of the 30 per cent it was to be returned to the company (Lerch, I, 308-309). Mr. Lerch did not make the check to Street and Folonie, agents, but to Charles R. Street, agent. Mr. Street asked to have it made that way. Mr. Street just asked Mr. Lerch to have it made to C. R. Street, agent (Lerch, I, 314).

"Q. Whose agent was he?

A. Well he was the agent of the companies generally in this litigation; I take it. I think they were all interested in it."

Mr. Lerch interpreted the check as authorizing Mr. Street as agent for his group to do what he pleased with it (Lerch, I, 314).

Mr. Lerch worked for Mr. Street at one time. Mr. Lerch was still with the Great American when Mr. Street was appointed vice-president. Mr. Lerch was there for about a year and one-half after Mr. Street came in (Lerch, I, 313).

Defendant's Exhibit 65 (I, 312) is a letter which Mr. Lerch received from Mr. Street. It is dated March 19, 1936, and is as follows:

"I acknowledge receipt of your check for $2,070.98 advance on the expenses in the Missouri Rate Litigation."

When Mr. Lerch delivered the check he asked Mr. Street to send him a receipt so that they would have it in their files. That is what Mr. Street sent in response, and is the only receipt Mr. Lerch received (Lerch, I, 311).

NORTH BRITISH AND MERCANTILE GROUP.

None of the companies in the North British and Mercantile group was connected with the federal court rate litigation pending in Missouri from 1930 to 1936 (Shallcross, II, 342). Mr. Shallcross did not attend a meeting in Mr. Haid's office in New York City on or about May 2, 1935, relating to the rate litigation. He was in London on that date. He attended no meeting with insurance executives or attorneys in which this litigation was discussed, from January 1, 1935, until June 1, 1936 (Shallcross, II, 342). Neither Mr. Street nor the Actuarial Committee nor anyone else discussed this compromise with Mr. Shallcross at any time. He was not interested in it, and knows nothing about it or the events leading up to it (Shallcross, II, 343).

XVII.

MR. STREET AND THE SUBSCRIBERS ACTUARIAL COMMITTEE.

In 1935 there were rumors of a compromise of the litigation. Witness cannot say offhand, and cannot recall, when the first discussion with reference to negotiations for a settlement was. He would think it was probably sometime during the early part of 1935 (Harding, I, 280).

In the early part of 1935, some discussion arose with reference to a compromise or settlement of this litigation (H. Clark, I, 250). The litigation was discussed by the Actuarial Committee during the years 1935 and 1936. The minutes would show everything that was ever said or done (Bell, I, 137). Looking to a settlement was discussed at various times prior to the date of settlement. The matter of possible settlement was brought up, very strong pressure being brought upon the committee by local agents all over Missouri (Bell, I, 138). At different times they would hear about a compromise. On several occasions Mr. Street reported to the committee that he had letters from agents wanting the litigation compromised, and that he even had letters from some Chambers of Commerce in Missouri (H. Clark, I, 250).

Mr. Street brought up the matter of a proposal of compromise of this litigation at one of the meetings of the Subscribers Actuarial Committee. At more than one meeting a suggestion was made that there was considerable pressure being brought from various interests—local Missouri agents, Chambers of Commerce. Mr. Street said he was negotiating, but did not say with whom nor mentioned the terms. He said that a settlement was pending, and witness waited until the settlement had been accomplished before he learned anything about its provisions (Henne, I, 23-25). Mr. Street did not reveal any of the proposed terms at any of these committee meetings which were held during the time of the negotiations. He simply told the committee that negotiations were pending (Henne, I, 25). Periodically, Mr. Street made a rather brief summary of what was going on, based on the reports he had received from time to time. He did not report in writing (Hobbs, I, 16). Witness knows of no activity of any member of the Committee other

than Mr. Street in this litigation (Hobbs, I, 16). Witness took a natural interest in the results, but he now thinks no other member of the committee was familiar with any of the details of what Mr. Street did, and when Mr. Street made his report, there was no verbal report ever made to witness (Bell, I, 142-143). Mr. Street discussed the pending of negotiations verbally with the committee and that is all there is to it (Henne, I, 24).

Finally, when it seemed that a possibility of settlement could be reached, the Committee authorized Mr. Street to proceed (Henne, I, 24). Mr. Bell served on the committee, and he remembers that the committee authorized a settlement (Bell, I, 160).

Those parts of the minutes of the Subscribers Actuarial Committee respecting the Missouri rate litigation were introduced in evidence. Nothing dealing with other matters, but only references to that litigation in the minutes are in the exhibits, which are defendant's Exhibits 17 to 26, both inclusive (Hobbs, I, 108-109). Defendant's Exhibit 16 (I, 98) is all of the minutes of the meeting of the Actuarial Committee on February 8, 1935, pertaining to Missouri rate litigation. It shows that those present were Messrs. Street, Bell, Harding, Henne, Williams, Koeckert and Parker. The minutes are as follows:

"Missouri:

(a) Reports of Attorney Folonie on progress of the Missouri litigation.

(b) Chairman Street's correspondence with Chambers of Commerce and Company Executives.

(c) Miscellaneous correspondence and newspaper clippings.

No action taken."

Defendant's Exhibit 17 (I, 98-99) is all of the minutes of said committee of its meeting of March 19, 1935, pertaining to Missouri rate litigation. It shows that those present were Messrs. Street, Clark, Bell, Harding, Henne and Parker. The minutes were as follows:

"Missouri:

Miscellaneous correspondence: Referred to generally.

Custodian's Accounts: Referred to.

Letters to Companies touching on Commissions: Referred to.

Correspondence which the Chairman had with Chambers of Commerce: Referred to.

Letters from Attorney Folonie Reporting Progress of Litigation: Referred to."

After referring to the above subjects in a general way the chairman explained at length the correspondence he had on this litigation, as well as those which he expected to have in the near future.

It was voted the sense of the meeting that the Chairman be authorized to proceed with the conferences in the manner outlined during the "discussion and report back to the committee at a future meeting the results of such further conferences. In other words, the conferences which he has had were approved, and he was requested to proceed with those contemplated 'with power.' "

Mr. Bell was present at the above mentioned meeting of the Subscribers Actuarial Committee (Bell, I, 139). He does not recall what correspondence it was that is referred to in the minutes of the meeting on March 19, nor that which "he was expected to have in the near future." The resolution that the chairman be authorized to proceed with conferences was presumably with State authorities. Witness knows of no one else that Mr. Street had conferences with, and does not recall particularly that he named anybody with whom he expected to have a conference. The State authorities were absolutely the only people he could negotiate with. Witness does not remember what outline Mr. Street gave as to what his conferences would be, except presumably the terms of that compromise settlement which he would attempt to secure. Witness does not remember what the outlines were as to the manner of Mr. Street's conferences, or as to what he expected to do. Mr. Street absolutely did not outline that he expected to raise a large sum of money and to pay it in corruption (Bell, I, 139-140).

Mr. Street said that the "conferences" were looking toward a compromise, but did not tell what the terms of the conferences, or proposed compromise, were. Witness did not know what they were, aside from having conferences. That is all they knew about it. Witness does not recall that anybody asked. The conferences were approved, so far as they were looking toward a compromise.

They voted that Mr. Street go ahead with these conferences and told him to go ahead, because they thought if he would go ahead with them he could bring back something concrete to the committee. Witness thought he would report back. Witness' thought was that they would give him full power to proceed with the conferences, thinking, of course, he would report back to the committee (H. Clark, I, 251-252). Witness does not know who "those contemplated" are (H. Clark, I, 253). Witness does not know who "those contemplated" were and he does not think any of the committee knows. He does not think it was disclosed. It could hardly mean anything but persons (Harding, I, 282). Witness did not care—with his regard for Mr. Street, with whom Mr. Street said he was going to confer. "I had such confidence in him that I would have been willing to"— (Interruption). Mr. Street did not mention that he had certain persons in contemplation, to witness' recollection. Witness would say that they were their Missouri field men, their agents, and representatives of commerce organizations; that was witness' understanding (Harding, I, 283). Mr. Street never told witness of any particular individual with whom he was negotiating (H. Clark, I, 250). He said nothing to witness about any negotiations with the other side, or with anyone else (Henne, I, 24). Mr. Street said he was negotiating, but did not say with whom nor mention the terms. He said that a settlement was pending, and witness waited until the settlement had been accomplished before he learned anything about its provisions (Henne, I, 24-25). The committee did not have information that there were men in Missouri who might be able to dispose of this litigation. They assumed there must be somebody there. Witness would naturally assume that there must be somebody in the State of Missouri that might get it disposed of. Mr. Street did not mention any of the names of these men in Missouri to witness' knowledge. The name of Thomas J. Pendergast or A. L. McCormack was not mentioned. Witness thinks it would have been a natural inference that Mr. Street referred to such men, whoever they were (Harding, I, 284). It might be a natural inference that he had conferred with men in Missouri who might have power to settle it but he did not tell them that. Witness supposes that someone made a motion that caused this entry to be made but he did not know whether it was made substantially in the words contained in the minutes. It is

usually the formality that a record is made as a result of a motion being put (Harding, I, 285). Mr. Street did not report from time to time with respect to the compromise, except that one time he told them there was a possibility of compromising the litigation. Witness does not think it ever came back to them again. He thinks that was about the early part of 1935, but he cannot tell the month. It was at a committee meeting and a minute was made of that meeting. Witness was shown Exhibit 17, and he said that that was the meeting to which he referred. At that time Mr. Street did not tell them the progress made in regard to the negotiations, nor with whom they were negotiating. He said that he had had some conferences with people in Missouri. He did not say with whom, and they just authorized him to go ahead and proceed with the matter (H. Clark, I, 250-251).

Witness remembers no discussion of expense at the time when the committee authorized Mr. Street to proceed "with power" (Bell, I, 143-144). Witness cannot explain the language "and he was requested to proceed with those contemplated 'with power.'" Witness knows that Mr. Street was given power, and according to the minutes, it was to effect a compromise, but that is not the way witness understood it. He understood that Mr. Street was given power to proceed with the conferences, with whom he had been conferring. They did not know who it was. He never told them (H. Clark, I, 252-253). The conferences were approved insofar as they were looking toward a compromise of the litigation. Mr. Street told them that the conferences referred to a compromise (H. Clark, I, 252). They did not ask him because witness does not suppose he would have told them if they had asked him, since he was that type of man that kept it to himself. He kept that secret and witness knew he was keeping it secret.

Question: And you approved it and gave him power, knowing he was keeping it secret from you?

Answer: Well, that is—I think I have answered that before, yes (H. Clark, I, 253).

The way the minute reads, the power was to go ahead and make the compromise, but on witness' own part, he never intended that Mr. Street should go ahead and compromise without bringing it back to the committee. He thinks they gave him power, whatever that meant (H. Clark, I, 252). At the time that Mr. Street was au-

thorized to proceed "with power," witness did not learn from any source of a fund of $100,500.00 raised by Mr. Street. He does not think he ever knew anything about it until it came out in the papers (H. Clark, I, 253).

Referring to the minutes, witness was asked if he understood that Mr. Street was given power to bind any of these 135 insurance companies to do anything he chose to do, or that Mr. Street could do what he pleased with them. Witness answered, "Well, I suppose they would ultimately have a veto power" (Harding, I, 299). Witness understood "with power" to mean with full power to act. That is about what he understood. It would be his own personal interpretation of it, from his own viewpoint at that time, that it meant that if Mr. Street thought best, to even conclude the litigation. That would be entirely satisfactory to him. What the other members of the committee thought he does not know (Harding, I, 285).

Witness was asked, in regard to the words "with power," what power Street needed to exercise with regard to chambers of commerce and field men, and he answered: "Well, just the same, he could do just what he pleased with them, so far as I was concerned."

Question: Don't you know that it was intended to do this: authorize either men who had control or might control the disposition of this litigation? Don't you know that that meant that?

Answer: Well, it was pretty broad, I will say that (Harding, I, 283).

Witness understood the expression, "with power" in the minutes to mean that Mr. Street was authorized to go ahead and make the compromise, any kind of a compromise which he had submitted in this previous report, and as witness understood it as a member of that committee, it was to be on a 80-20 basis, and it is witness' recollection that he understood that before they gave Mr. Street power to make the settlement (Bell, I, 143).

Mr. Street only reported back to the committee that he might settle this litigation on a 80-20 basis. That is the only thing witness remembers. Mr. Street did not report the details of the various conferences, what one said or what the other said. He did not report how many conferences he had had, or during what length of time. The first witness heard, after this meeting when they gave him authority to negotiate, was the result, which

was 80-20, that is, 80 per cent for the company and 20 per cent for the policyholders (Bell, I, 140-141).

There were various suggestions made, possibilities of settlement, but Mr. Street's final report to the committee of 80 per cent and 20 per cent is the only one that witness distinctly remembers. He remembers a discussion prior to that of a possibility of settlement of 10 per cent to the policyholders and 90 per cent to the companies. It was not one of the things that impressed him particularly and does not to this day. It was naturally the kind of a settlement the members of the committee would like to have seen made because they felt they had won their case anyway (Bell, I, 138-139).

Witness was shown defendant's Exhibit 17 and asked if Mr. Street addressed the meeting therein mentioned in regard to the proposed settlement of this litigation. He said that was not his recollection of it; that he thinks Street was reciting the pressure that had been brought to bear on him to bring about a settlement. A lot of the agents and field men and chambers of commerce thought it was time the thing was closed up and this action was taken after Mr. Street addressed the meeting. Mr. Street mentioned a lot of conferences with these representatives of the chambers of commerce, agents, and field men of the companies. Witness did not understand the minutes to refer to conferences with anybody who had power to settle the litigation. On March 19, 1935, witness had no information that there were any negotiations between parties who had authority to act in regard to a settlement (Harding, I, 281-282). Mr. Street had not reported that at the time of this meeting. Witness did not know that there was any contact between his and the other side of the case for the purpose of a settlement. Witness does not think the word "approval" has quite the weight which it might seem to have in reading the minutes. Mr. Street had reported the pressure that had been brought to bear on him. Witness thinks his report of that was approved just in the course of business. He does not think there was anything that required any special approval except a favorable comment in that sense (Harding, I, 282).

Defendant's Exhibit 18 (I, 99-100) is a copy of the minutes of the meeting of July 9, 1935, pertaining to the Missouri rate litigation. It shows that those present were Messrs. Street, Bell, Henne, Koeckert, Harding, Williams and Parker. The minutes recite that:

"The reports received from Attorney Folonie from time to time on the progress of the settlement negotiations were presented in detail, and his report of July 6th was read by the Chairman, following which the Chairman explained some of the ramifications of this controversy and asked for the continued support of the committee in handling this matter.

After discussion it was voted the sense of the meeting that the Chairman be authorized to continue to conduct these negotiations along whatever lines seem expedient.

The Chairman referred to the advertisement that had been run by the Kansas City Fire and Marine Ins. Co., endorsing the settlement, that had been authorized by him, and stating that he had assumed the expense of same. His action was approved.

The same applies in the case of the Springfield Agents who had the Kansas City article published in their papers.

The question of running ads in the St. Louis papers proposed by Mr. Mahan was then referred to and the Chairman reported he had advised against the same at the present time. This was noted and approved.

Chairman recommended against any action along this line of the proposal for Wallace Rogers. His recommendation was approved.

The Chairman advised that the proposal of the St. Louis agents to run articles along this line had been abandoned.

Newspaper Articles Noted."

Mr. Hobbs has made diligent search, but has been unable to find the report of Mr. Folonie of July 6th that was read by the chairman, and has not been able to find the "Memorandum of Proposed Settlement." Mr. Hobbs is the custodian of the files (Hobbs, I, 100-101).

Mr. Folonie may have made a report about July 6, 1935, but if he did, he made it to the committee (Bell, I, 143).

Witness was present at the meeting of July 9th, but he does not recall any reports that Mr. Folonie made on the progress of the case at that time. Mr. Folonie would be present, but witness does not remember what he said. Many reports were made from time to time upon Missouri. Witness cannot segregate in his mind any sort of a report or the character of any report which Mr. Folonie may have made. He made a great many during the years

of this litigation. Presumably Mr. Folonie must have told the committee what the compromise was and all its terms in his report mentioned in the minutes of July 9, 1935, but witness does not remember any specific report which he made. He does not recall that his report of July 6th was made by the Chairman and does not recall what it contained, but presumably it was read at that meeting. Presumably it detailed the settlement, but witness does not remember it; he is not able to say it did not. He does not have Mr. Folonie's letter or report of July 6th, and he would not know where to tell you to get it except in the office of the Secretary to the Committee (Bell, I, 144).

Mr. Harding imagines Mr. Folonie was present at the meeting mentioned in Exhibit 18. He cannot say whether Mr. Folonie's reports were filed. No copies of them were furnished to the members. He assumes that Mr. Folonie's report of July 6 was in writing. Witness does not have it and would not know how to furnish that report (Harding, I, 286).

Witness has no recollection of a detail, in connection with serving on that committee, about the favorable publicity; some of the companies going in to back up the compromise with newspaper ads, and none in the world about favorable newspaper comments in the Kansas City or Springfield papers or anything of that kind being discussed, or of doing the same thing in the St. Louis papers (Bell, I, 145).

Defendant's Exhibit 19 (I, 101) is a copy of the minutes of the meeting of the committee on October 1, 1936. It shows that those present were Messrs. Street, Henne, Harding, Clark, Williams, Parker, and that:

> "The file of correspondence on the Missouri litigation, and the report of Attorney Folonie, dated the 30th, were read to the committee and noted."

Defendant's Exhibit 20 (I, 102-103) refers only to expenses of the litigation and is reported under "History of the Litigation, Expenses and Assessments."

Defendant's Exhibit 21 (I, 104) is a copy of that part of the minutes of the meeting of the committee on November 27, 1935, pertaining to the Missouri rate litigation. It shows that those present were Messrs. Street, Williams, Harding, Bell, Clark, Henne and Hobbs, and recites that:

"Recent correspondence with the attorneys regarding the status of the litigation in Missouri was referred to but not read."

Defendant's Exhibit 22 (I, 105) is the minutes of the meeting of the committee on April 8, 1936.

The matters referred to in the minutes apparently have no reference to the litigation.

Defendant's Exhibit 23 (I, 106) is a copy of all that part of the minutes of the committee of its meeting of June 5, 1936, pertaining to Missouri rate litigation. It shows that those present were Messrs. Street, Bell, Clark, Henne, Harding, Hobbs and Beckwith.

It recites that the recent report of the counsel to the chairman regarding the status of the litigation in Missouri was referred to but not read.

Defendant's Exhibit 24 (I, 106) is all that part of the minutes of the meeting of the committee on October 23, 1936, referring to Missouri rate litigation.

The only matters referred to concern attorneys' fees and the manner of approval. It appears under "History of the Litigation, Expenses and Assessments."

Defendant's Exhibit 25 (I, 107) is all that part of the minutes of December 8, 1938, showing all that was done respecting the Missouri rate litigation. It shows that those present were Messrs. Street, Henne, Bell, Robertson, Koeckert, Clark, Williams, Beckwith and Hobbs.

It states that the letter from Attorney Folonie referring to the developments in the past few months in the rate litigation in Missouri was referred to but not read.

Witness attended the meeting shown by Exhibit 25. He does not think that, at that meeting, there was any mention made of the former meeting or of any of business transacted in connection with the former meeting (H. Clark, I, 276-277).

Defendant's Exhibit 26 (I, 108) is the minutes of what was done at the meeting of the committee on April 30, 1935, respecting the Missouri rate litigation. It shows that those present were Messrs. Street, Bell, Henne, Clark, Williams and Parker.

It recites all the correspondence which the chairman had with various people, and the report of the attorney on the progress of the litigation, were submitted, noted and ordered passed to the file.

The committee did not have the minutes of the preceding meeting read at each meeting (Bell, I, 162). Judge Henson (counsel for defendant) several times referred to the minutes of a meeting and to particular reports. Witness stated that he did not remember a particular report, and could not separate in his mind what information he got out of one report or the other, or whether he got it on one date or the other. He did not mean to say that he had no recollection of his activity on that committee. He meant to say and infer that he cannot now segregate so many reports. Every meeting there were reports from Mr. Folonie or from Mr. Street, or a discussion, and he cannot segregate or separate the various sources of his information (Bell, I, 160).

Mr. Williams has no recollection that Mr. Street submitted the settlement back to the committee after it was negotiated. His recollection is that they got a memorandum from Mr. Street that a settlement had been made (Williams, I, 73-74). Mr. Williams knows that there was a compromise made in May, 1935. He did not know that negotiations were pending, and he never heard of the compromise at all until it was completed. He has no recollection that it was submitted until it was submitted as a finished matter (Williams, I, 72). If the compromise was reported back to the Subscribers Actuarial Committee, witness does not know in just what form. If it was discussed, witness was not there (Koeckert, I, 517). Witness does not remember ever seeing any contract. All he knows is the result. He would not know and does not remember whether the contract was brought back and filed with the Subscribers Actuarial Committee. He did not ask that that be done (Bell, I, 142). Mr. Williams knows that Mr. Street negotiated the settlement. He is not entirely clear whether an agreement was signed or not. He presumes there was, or some memorandum (Williams, I, 73).

Prior to the time the compromise was signed, Mr. Henne knew not a word about its terms or provisions (Henne, I, 25). Mr. Henne first learned of the negotiations after they were completed, approximately in 1935. He thinks that when he first heard of the possibility of the settlement being concluded was along about February, 1935. He does not know whether an agreement had been reached at that time (Henne, I, 24). Witness does not have the filed memorandum of the proposed settlement, and has no idea where to get it, except in the files

of the Secretary of the Committee. Witness has no idea what the memorandum was. He presumes that it set out that the settlement was made and signed on May 18, or substantially that date; that 50 per cent of the money went to the companies, 30 per cent to Street and Folonie, as trustees, to pay all expenses, including attorneys' fees, and 20 per cent to the policyholders; but he does not know, he has no recollection of it. He does not remember that the chairman brought up the fact that the Kansas City Fire and Marine Insurance Company had run an ad in the Kansas City paper that Mr. Street wanted to pay the expense of it and that they authorized it (Bell, I, 145). The settlement was, roughly speaking, on an 80-20 basis. Witness remembers the settlement had been made, that 20 per cent went to the policyholders, but only 50 per cent went immediately to the companies, and that 30 per cent was to be held up by trustees for various purposes including paying the costs and expenses on both sides. He remembers that. That is all a matter of record, meaning his own office records. He supposes a report of the settlement was made to the committee, but he does not remember just when he got it. He knows that he got that information. As quick as a settlement was agreed upon, that fact became notorious, and he naturally took an interest in what the nature of that settlement was. Somehow or other witness got that information shortly after the news came out that a settlement had been made (Bell, I, 160-161). Twenty per cent of the impounded premiums would be returned to assured, fifty per cent would be returned to the companies and thirty per cent was to be retained for expenses and other things, and to be retained in some sort of a trust fund for the purpose of discharging obligations or paying expenses, so far as witness understood it, for attorneys' fees for both the State and the companies (Williams, I, 74).

Witness does not remember that in Mr. Street's report to the committee it was discussed that the companies were to immediately get 50 per cent and that 30 per cent was to be set aside, nor when he first heard of the 80 per cent set aside to Street and Folonie as trustees to pay expenses. The expenses were to be paid after the 50 per cent was paid by the department to the companies. That left 30 per cent of the whole, which was set aside to Street and Folonie as trustees to pay the expenses of the custodian, the department, attorneys' fees and various expenses connected with the federal case. Witness does

not remember what attorneys' fees were to be paid out of the 30 per cent (Bell, I, 141). The 5 per cent was authorized by the committee and again the committee had before it the question of disbursements out of the 30 per cent fund (Clark, I, 263) and took into consideration when they were determining the disbursement of the additional 5 per cent the attorneys' fees for which they were liable. They had no way of knowing. They knew there would be a lot of attorneys' fees, because the litigation was far from ended. Witness cannot answer to what extent or in what amount. Witness has no records and does not know whether the committee has or not, and cannot tell how much they calculated for attorneys' fees at that time (H. Clark, I, 263-264). Witness cannot remember how soon it was after the contract was made that he understood that there was 30 per cent set out for the payment of expenses. It was a long drawn out, complicated sort of thing, and simply as a member of the committee he would not be familiar with it. Very likely Mr. Street reported the results of that contract and in a general way the terms of it to the members of the committee very shortly after the signing (Bell, I, 142). At the time, witness, as a member of the committee, was very familiar with what the impoundment was. It was something like $9,000,000.00. The 30 per cent would amount to something like $2,700,000.00 set aside to pay all expenses (Bell, I, 141).

Witness was read the provision that disbursements out of the 30 per cent fund by the trustees should be on approval "evidenced by the orders and directions for payment of the money upon certificate of J. V. Parker, as secretary, or his successor, or the action of such committee or upon the signed order of any two such members" and "which shall be evidence of action of such committee in authorizing and directing any payments from such moneys in fund" (Clark, I, 256). He never saw that before, but he knew that was the practice in disbursing that money. When the money was disbursed from the trust fund it was ordinarily approved by two members of the committee. When the money was disbursed it was not brought before the committee and action taken by one of those methods, but when it was disbursed it was approved by any two members and the trustees disbursed it after the approval. That was the custom pursued (H. Clark, I, 256-257). Mr. Jackson Parker could certify that the committee has approved disbursement

out of the 30 per cent fund, or two members could approve it. Mr. Parker could simply certify the action of the committee. Witness imagines that thereafter he acted as one of the two members of the committee to approve certain disbursements (Harding, I, 286).

The disbursement of the 11 per cent was undoubtedly approved by the committee. At that time they undertook to leave in there sufficient funds to take care of all expenses. They intended to do that and thought they had done it, because it is a task to gather up assessments from all of these companies—a real, genuine task. It would be a natural thing to do. They wanted to be absolutely sure that they left enough money in the 30 per cent to pay all expenses (Harding, I, 287). Mr. Clark does not know whether the dividend had or required approval of the committee (referring to dividend mentioned in Exhibit 52; see "Knowledge and Actions of Various Executives, Group 17") (H. Clark, I, 259). The committee approved the 6 per cent disbursement mentioned in Exhibit 52, and then it was changed to 11 per cent (Stipulation, I, 259). On March 9, 1936, the Committee had authorized the 6 per cent (H. Clark, I, 261). At the time that the committee authorized that payment (referred to in Exhibit 52), it was clearly understood that they could safely do that and take care of all expenses (H. Clark, I, 259).

So far as witness knew, no member of the committee had any information as to the disposition of the impounded funds until the settlement was an accomplished fact (Henne, I, 25). Mr. Bell has no recollection of having seen the compromise agreement dated May 18, 1935, and he does not remember any discussion in the Subscribers Actuarial Committee while he was present about Mr. Street wanting to raise some money by assessment on the companies in connection with the settlement (Bell, I, 162).

Mr. Street did not report to the committee that in May, 1935, he gathered up $100,500.00 from some fourteen companies to use in accomplishing a settlement. He said nothing about it, and the committee did not receive the money (Hobbs, I, 16-17). So far as Mr. Hobbs knows, or the record shows, the Actuarial Committee did not get any of that money (Hobbs, I, 19).

Mr. Hobbs did not know that 5 per cent of the impounded funds of all of the companies were paid to Mr.

Street. Mr. Street did not report to the committee that in April, 1936, he had collected $330,000.00 or more (Hobbs, I, 17). Mr. Hobbs received a telephone call about that time from one company, whose name he does not now remember, stating that it had a request from Mr. Street for the payment of a check for expenses in connection with the litigation, and asking witness if he could explain. Witness replied that it was the first he had heard of it, and that if they wanted any information they could go to Mr. Street. There may have been other companies which inquired, but that is the only knowledge witness had of the fact that any money had been requested by Mr. Street from the companies (Hobbs, I, 17). They 'phoned Mr. Hobbs. He has no letters from them that they can produce (Hobbs, I, 18). Mr. Hobbs never got the information from Mr. Street and he made no inquiry of him after he had these conversations. In his capacity as Mr. Parker's assistant, Mr. Hobbs was not in the habit of asking Mr. Street questions. Mr. Street told Mr. Hobbs what he wanted him to know, and was the type of man that you were not inclined to ever give him the chance to tell you that that was his business. Mr. Hobbs had known Mr. Street and had worked with him a good many years, and he let Mr. Street tell him what he thought he should know on any problem that came up (Hobbs, I, 18). Mr. Hobbs would not say that he knew better. He just says that he would not inquire (Hobbs, I, 19). Mr. Hobbs did not tell any other member of the Actuarial Committee or anyone else what he had just learned (Hobbs, I, 19). Mr. Hobbs knows of no member of the Actuarial Committee to whom Mr. Street gave information that he was collecting 5 per cent from the companies (Hobbs, I, 18). The collection of the 5 per cent was not reported to the Actuarial Committee or any record made (Hobbs, I, 19).

After receipt of Mr. Street's letter (Deft's. Exhibit 11, I, 82), the committee met numerous times. Mr. Williams' attendance at those meetings was very infrequent because of the commuting he had to do. The item of 5 per cent was not discussed or mentioned in the committee as far as witness knows, either before or after Mr. Street's death. Witness cannot tell whether it has been mentioned to this date, because he has not been on the committee since 1937, and he does not think he attended over a couple of the meet-

ings up to that time. He resigned because he could not attend them (Williams, I, 96-97).

Mr. Harding does not recall that the committee knew any reason for the required return of 5 per cent. Witness never had any knowledge as a committee member. The request for the return of 5 per cent was made March 23, 1936, and he left this country, he thinks, in the first few days of March. He knew that a dividend had been authorized at the time he left this country in the early part of March. He then changed his answer and said he did not recall it. He thinks he returned to this country on the thirty-first of March and in due course he learned of the check dated March 23, 1936. He probably learned they had received an 11 per cent dividend, and he probably learned that Mr. Street had required or requested, and had gotten a return of 5 per cent. He did not learn anything about what the 5 per cent was for and made no inquiry. It was all charged to his office. When the president charged it against his department he does not inquire what it is for. He did not even ask. All the information he got as to what it was for he thinks is disclosed in the record that counsel has before him. He thinks he looked over the record. It was largely an accounting proposition with which he is not especially familiar. There was no occasion for him to familiarize himself with it. He recalls nothing in the record that reflected to him the purpose for which the 5 per cent was sent back to Mr. Street. He sought no information from any other source and has not done so to this day; and to this day does not know the purpose for which Mr. Street required it. Since the early part of 1939 he has seen press articles generally charging that it was used for corrupt purposes in Missouri. He has made no inquiry to find out the one who is most able to disclose the facts as he was no longer here. He is not in contact with Mr. McCormack, and he is just judging from newspaper accounts. The executor of Charles R. Street is said to be the City National Bank and Trust Company. Witness never did inquire from the executor how that money went out of Mr. Street's hands, or to whom. But he had an interest in it. The 5 per cent for the company of which he had charge is $15,821.52. The amount of the impounded premiums charged to his Western department was $316,430.51, and 5 per cent of that is $15,821.52. Judging from his advice from his head office, that amount was turned over to Mr. Street (Harding, I, 287-290).

Mr. Charles H. Smith is not sure but would say that he went on the committee before December, 1937. He thinks it was in June. Mr. Street was no longer a member of the committee at that time (C. H. Smith, I, 336).

Mr. Smith would say that he had no knowledge concerning the details of the rate litigation before going on the committee in June, 1937. He knew it was going on and that was about all. Before he went on the committee he had learned that a compromise had been made and that a decree was entered in regard to the impounded premiums (C. H. Smith, I, 334). Mr. Street was not on the committee but had retired before witness became a member (C. H. Smith, I, 335).

Mr. Smith thinks that after he went on the committee the matter of the compromise and decree in accordance with the impounded premiums was not discussed formally. There were informal remarks made about it, but he does not remember that it was discussed formally, except on one occasion they talked about the fund that was in the hands of the trustees and distributions of the companies as a part of that fund. It was looking toward distributing more money to the companies rather than holding it in the hands of the trustees. That was commonly called the 30 per cent fund. There was no mention at that time of the fact that 5 per cent of the moneys paid out of the 30 per cent fund had been returned back to Mr. Street for any purpose. Witness had no idea, until the newspapers told us, that any such fund had ever been given Mr. Street, and when the Missouri story came out in the press witness thought it could never be true, because he had never heard of it, and until that time he knew nothing whatever about 5 per cent that Mr. Street had gotten from the companies. After he heard of that affair, he discussed it with executives of insurance companies. It has been discussed a great deal. No one told witness that he had any knowledge concerning Mr. Street's activities (C. H. Smith, I, 335).

XVIII.

MR. STREET AND MR. FOLONIE.

A.

MR. FOLONIE CLEARED CHECKS FOR MR. STREET IN 1935.

On May 9, 1935, Mr. Folonie came into his office and found Mr. Street, who had a bunch of checks. Mr. Street told Mr. Folonie he had gotten $50,000.00 from Mr. Hicks, Mr. Folonie's partner, and that he had checks for $100,000.00 from the companies and wanted Mr. Folonie to clear them through the latter's firm bank account, reimburse Mr. Hicks with the $50,000.00 he had already given Mr. Street, and give Mr. Street checks for the remainder (Folonie, III, 165). Mr. Folonie paid no attention to the capacity, but some of the checks were made to Mr. Street with, perhaps, some capacity added. Some were made to Mr. Folonie, and some to his firm (Folonie, III, 170).

Mr. Folonie has seen Mr. Hicks's check. It was a personal check dated May 9, 1935. Mr. Folonie borrowed it from the executor of the Hicks Estate and took it, with the photostatic copy, to the grand jury in Kansas City last March. He does not have it with him (Folonie, III, 167). For nearly three years Mr. Hicks had done nothing at all except in his office, with not a dollar of his services put on the books for years. Mr. Folonie left the partnership as it was, without calling on Mr. Hicks for any service, because he knew the latter's days were few and Mr. Folonie would not change the relation. Nothing was said in the conversation as to why Mr. Hicks had given a personal check to Mr. Street for $50,000.00 (Folonie, III, 167).

Mr. Folonie checked over the checks and they aggregated $100,500.00 (Folonie, III, 165-166). Before making the checks he had Mr. Hicks come in, and he asked whether Mr. Street's statement that Mr. Hicks had paid Mr. Street $50,000.00 was correct. Mr. Hicks said he had; that Mr. Street had said the latter would turn over these checks and wanted Mr. Hicks to give Mr. Street checks for the balance. Whereupon, the bookkeeper went out and made out the checks (Folonie, III, 166). Mr. Folonie endorsed the checks that Mr. Street had, or caused them to be endorsed, for deposit. He told the bookkeeper

to make a record directly from the checks instead of making a list and making entries from the list, and to make one check for $50,000.00 to Mr. Hicks, one for $50,000.00 to Mr. Street and another for $500.00 to Mr. Street, which is the way Mr. Street wanted the checks (Folonie, III, 166). Mr. Folonie gave one check signed by Hicks and Folonie to Mr. Hicks to reimburse him for the $50,000.00 he had given to Mr. Street, and two checks to Mr. Street, one for $50,000.00 and one for $500.00 (Folonie, III, 184).

Mr. Folonie turned them over to Mr. Street, telling him that it would be necessary for him to protect Mr. Folonie on income tax, so that there could be no claim that the firm had gotten it for fees and then loaned it to Mr. Street. Mr. Street said he would write out whatever they wanted, and Mr. Folonie had him write a receipt, possession of which was taken by Mr. Hicks (Folonie, III, 166). Mr. Folonie knows Mr. Hicks had it. Either Mr. Folonie or Mr. Street gave it to him. Mr. Folonie thinks Mr. Street did (Folonie, III, 178, 167). The receipt stated in substance that the checks had cleared at Mr. Street's request, and Mr. Street signed the statement (Folonie, III, 166). Mr. Folonie knew it would require an explanation to the income tax department at a later date, and took the precaution of having Street execute a statement for the purpose of safekeeping which Mr. Street executed that day. Mr. Folonie does not know whether Mr. Hicks was present at the time he required the statement to be executed, but Mr. Hicks knew about it either then or immediately after it was done (Folonie, III, 177-178).

Mr. Folonie does not know who phrased the statement, but has no doubt Mr. Street and he collaborated somewhat in preparing it. Mr. Folonie requested it and told Mr. Street what he wanted to have in it. He probably interspersed suggestions, but does not remember. If it were dictated to a stenographer, the stenographer's notes would not be available. Witness has forgotten how long they keep the notebooks, but they keep them six months, more or less (Folonie, III, 182-183). It may have been typewritten, but Mr. Folonie does not now re-

call that it was. He has not endeavored to find his stenographer's note in regard to it (Folonie, III, 178).

Mr. Folonie does not have the statement (Folonie, III, 166). He never saw the first statement after that (Folonie, III, 183). Mr. Hicks died from cancer the following fall (Folonie, III, 166). Mr. Folonie's firm were attorneys for Mr. Hicks's estate after he died in October, 1935 (Folonie, III, 183). At that time Mr. Folonie went through Mr. Hicks's files and papers. This was one of the things he was looking for. He could not and never did find the receipt (Folonie, III, 166, 183). It evidently was not put in the partnership files, because it was not there. He has no doubt, and he thinks the great likelihood was, that Mr. Hicks kept the statement and put it in some secure place, because he expected to die, and he was concerned all the time about taxes and things that might happen to his family after he died. Mr. Folonie does not know what Mr. Hicks did with it (Folonie, III, 183).

Later, income tax investigators (being told substantially what Mr. Folonie now tells), wanted a statement from Mr. Street who made one which he gave to the income tax man (Folonie, III, 166-167). In substance it was identical with the prior statement or receipt he had given Mr. Hicks, and the income tax man gave Mr. Folonie a photostatic copy of it (Folonie, III, 167, 178) which is defendant's Exhibit 296 (III, 179). The statement shows it is signed by C. R. Street. It is as follows:

> "On May 9, 1935, I received checks from various insurance companies, in part payable to me and in part payable to Hicks & Folonie, totaling $100,-500.00. These amounts were paid to me, as chairman of an insurance committee, and were cleared by Hicks & Folonie through their bank account at my request. The entire amount being transmitted to me by check of E. H. Hicks for $50,000.00 on the same date; by check for $50,000.00 from Hicks & Folonie on May 10, and further check of Hicks & Folonie on May 10 for $500.00. No part of such sum of $100,-500.00 was any fee payment, nor to be retained by,

nor was the same retained by, Hicks & Folonie but they merely cleared such checks for me at my request."

The two statements do not differ in any important particular (Folonie, III, 178).

Mr. Folonie's best recollection is that the statement signed by Mr. Street was written in longhand, but he might be mistaken. He has no recollection that it was dictated (Folonie, III, 178, 182). Mr. Street gave the statement (Exhibit 296) to the field man for the income tax unit; and when the latter came back to Mr. Folonie's office and displayed it, Mr. Folonie asked if the field man had any objection to his making a copy and the field man said he did not. Mr. Folonie at that time knew that the copy given to Mr. Hicks was lost. Mr. Folonie had already made a hunt for it for the income tax unit; he wanted this in some form; so he asked the field man to make a copy (Folonie, III, 182).

The statement might affect Mr. Folonie's income status. He did not intend either statement to be any record at all, but just a statement. He intended to use it defensively if somebody claimed he had gotten this money and kept it for fees. He wanted to show that this was not so. That, and probably inheritance problems of Mr. Hicks, was all he had in mind. He did not analyze it, but would say he had taxes in mind, and nothing else (Folonie, III, 184).

Mr. Folonie examined the checks and has the bookkeeping entries and records of them (Folonie, III, 168). He had a photostatic copy of his firm's cash book pages prepared for presentation to the grand jury (Folonie, III, 168).

Defendant's Exhibits 293 and 294 (III, 169) show that under date of May 9, 1935, the entries on the cash book of Mr. Folonie's firm, under cash receipts, are as follows:

"Scottish Union & Nat'l Ins. Co.	4,000-.
Hartford Fire Insurance Co.	10,000-.
Royal Insurance Co.	10,000-.

Continental Insurance Co.	15,000-.
Home Insurance Company	15,000-.
Aetna Insurance Company	5,000-.
Great American Insurance Co.	10,000-.
National Fire Insurance Co.	5,000-.
Phoenix Insurance Company	6,500-.
Commercial Union Ass'n Co.	7,500-.
Crum & Forster	5,000-.
Travelers Insurance Company	2,000-.
Automobile Insurance Company	3,500-.
Caledonian Insurance Co.	2,000-."

Under date of May 10, 1935, the entries on those books, under cash disbursements, are as follows:

"E. H. Hicks	$50,000-.
Charles R. Street	50,000-.
Charles R. Street	500-."

Mr. Folonie intended the entry of the checks to be a partnership record (Folonie, III, 184). He thinks he did not designate Mr. Street in the checks other than "C. R. Street." Both entries in his book read "Charles R. Street." The entries were made by the bookkeeper who also drew the check. Mr. Folonie has no doubt that the check reads the same way. The checks are still in existence and in his possession (Folonie, III, 184-185).

Mr. Folonie was asked whether his books ordinarily reflect the purpose for which a check is given, and he called attention to the fact that on the same page of his books there is a check to Empire Cooler Service Company, one to Horders Stationery Store, and one to Western Union Telegraph Company, that do not state what they were for. He does not keep the books, but supposes that entries on the checks usually show the purpose for which they are given. His books show checks to Mr. Street in the same aggregate amount as the other checks, and that is all (Folonie, III, 185).

The checks were introduced in evidence. They are the following:

Exhibit No.	Transcript Reference	Date of Check	Company Issuing Check	Payee	Amount
Def. 220	II, 468	5/3/35	Scottish Union & National Insurance Co.	R. J. Folonie, Attorney	4,000.00
Def. 218	II, 449	5/3/35	Hartford Fire Insurance Company	C. R. Street, Chairman	10,000.00
Def. 104	I, 474	5/2/35	Royal Insurance Company, Limited	C. R. Street, Chairman	10,000.00
Def. 5	I, 46	5/2/35	The Continental Insurance Company	Chas. R. Street, Chairman	15,000.00
Def. 94	I, 428	5/2/35	The Home Insurance Company, New York	Charles R. Street, Chairman	15,000.00
Def. 321	III, 342		Aetna Insurance Company	Charles R. Street, Chairman	5,000.00
Def. 84	I, 400	5/9/35	Great American Insurance Company, New York	R. J. Folonie, Attorney	10,000.00
Def. 33	I, 148	5/7/35	National Fire Insurance Co. of Hartford	Hicks & Folonie, Attys.	5,000.00
Def. 295	III, 181	5/4/35	The Phoenix Insurance Company	R. J. Folonie, Atty.	6,500.00
Def. 109	I, 501	5/2/35	Commercial Union Assurance Company, Ltd.	C. R. Street, Chairman	7,500.00
Def. 167	II, 165	5/2/35	Crum & Forster	Charles R. Street, Chairman	5,000.00
Def. 254	III, 49	5/3/35	The Travelers Insurance Company	Charles R. Street, Chairman	2,000.00
Def. 278-A 278-C	III, 138	3/4/35	The Automobile Insurance Company of Hartford, Connecticut	C. R. Street, Chairman	3,500.00
Def. 214	II, 423	5/3/35	Caledonian Insurance Company of Scotland	Charles R. Street, Chairman	2,000.00
			Total		$100,500.00

The above checks which were payable to Mr. Street were endorsed as follows:

> "Pay to order of R. J. Folonie, Atty. C. R. Street, (or 'Charles R. Street as he is described in the check') Chairman"
> "R. J. Folonie Atty."
> "Harris Trust & Savings Bank, for deposit Hicks & Folonie per R. J. Folonie"

except that on the Hartford check Mr. Street endorsed his name as follows "C. R. Street, Charles R. Street, Chairman."

Those payable to Mr. Folonie were endorsed as follows:

"R. J. Folonie, Attorney" (or "Atty," as he is described in the check).

"Harris Trust & Savings Bank, for deposit.
Hicks & Folonie per R. J. Folonie."

The check made payable to Hicks & Folonie, Attys., was endorsed as follows:

"Harris Trust & Savings Bank for deposit.
Hicks & Folonie per R. J. Folonie."

According to Mr. Folonie's recollection, none of the checks had any words indicating that they were for legal fees. If they did he does not recall it (Folonie, III, 170). Note: An inspection of the above listed exhibits shows that the following notations were on the following mentioned checks:

On The Phoenix Insurance Company check appears "In payment of advance *in re* Missouri litigation."

On The Automobile Insurance Company of Hartford, Connecticut, check appears "Adv. legal fees."

On the Caledonian Insurance Company of Scotland check appears "Advance *re* Missouri litigation."

On the Royal Insurance Company, Limited, check appears "In full payment of advance *re.* Missouri litigation."

On the check of Great American Insurance Company, New York, appears "fee."

On The Automobile Insurance Company of Hartford, Connecticut, check, the words "R. J. Folonie, Atty." are in Mr. Folonie's handwriting, and the words "Pay to the order of R. J. Folonie, Atty., C. R. Street, Chairman," are in Mr. Street's handwriting. On the check of The Phoenix Insurance Company the endorsement "R. J. Folonie, Atty." and the words "Hicks & Folonie, per R. J. Folonie" are in Mr. Folonie's handwriting. Mr. Folonie assumes that the words "Adv. legal fees" on The Automobile Insurance Company of Hartford, Connecticut, check were on there at the time he got the check, although he has no recollection of it at all. He knew at the time that the check made payable to R. J. Folonie was

payable to him. Mr. Street did not say anything about that particular check or about any other check which bore a similar payee, any more than he did the others. He just wanted Mr. Folonie to clear all the checks through Mr. Folonie's firm's bank account, and to make disposition of the proceeds as Mr. Street requested (Folonie, III, 171-172).

Mr. Folonie did not know how the accountants put it on their books and it was not material, because Mr. Folonie was satisfied of the true fact, that is, that Mr. Street was getting the money, using it, accounting for it to his principals, and that all Mr. Folonie was doing was putting into Mr. Street's possession what they intended him to have (Folonie, III, 206). It did not strike Mr. Folonie as being a most unusual situation that Mr. Street did not volunteer any information (Folonie, III, 173). Mr. Folonie would not say he had no curiosity as to why Mr. Street was handling it this way, but he had no reason in his own mind to pursue the matter, except as Mr. Street saw fit to tell him (Folonie, III, 177).

Mr. Folonie never afterwards inquired of Mr. Street why he cleared the checks through the firm's books, paying the proceeds over as indicated. Mr. Street never reported to Mr. Folonie the manner in which he had disbursed the $100,500.00, and Mr. Folonie never asked him. Mr. Folonie had a number of speculative things in mind as to what Mr. Street might do with the money, but never asked him what he had done with it. Mr. Folonie assumed that it would be used in the compromise, or possible compromise, of the case, and if not, it would be sent back to the people from whom Mr. Street secured it (Folonie, III, 185).

When Mr. Street cleared this $100,000.00, Mr. Folonie went in and talked to his partner, Mr. Hicks, who had nothing to do with the litigation, except that Mr. Folonie blew off steam to him. The two tentatively came to the conclusion that probably Mr. Street had already settled the case and made his terms, and that probably this was something which he had already incorporated in the settlement (Folonie, III, 226-227).

Mr. Folonie figured that probably Mr. Street had some other lawyers who were helping him with the settlement, that he would have to pay. Mr. Folonie knew that during the previous year Mr. Street had made a suggestion of some lawyers that he thought of employing,

and had Mr. Folonie inquire about their availability. Mr. Folonie does not think Mr. Street pursued it or spoke to them. There was nothing secret about Mr. Street's employing other lawyers except that, being chief counsel in the case, if Mr. Street was hiring other lawyers who would probably negotiate the handling of the settlement and leave Mr. Folonie out of it, and he had been out of it right along, very likely Mr. Street would not want Mr. Folonie to know who they were or what he was paying them. That was one very likely thing in Mr. Folonie's mind as a speculation, rather than a conviction (Folonie, III, 174).

So far as Mr. Folonie knew, funds did not exist in Mr. Street's committee, and Mr. Folonie assumed that when Mr. Street asked him to clear these checks, Mr. Street wanted him to act as a means of putting the whole sum at Mr. Street's disposal, which Mr. Folonie did. If the checks had been issued directly to Mr. Street, or if Mr. Street had cleared the checks himself, he would have had the whole sum at his disposal. Knowing Mr. Street as he did, Mr. Folonie did not think it peculiar that he had been called upon to act as a clearing agency for Mr. Street, when all the latter needed to do was to take the checks and deposit them in an account in a bank. Mr. Folonie thought that Mr. Street wanted to have it this way, and Mr. Folonie did it, having two or three ideas in mind, perhaps not at the moment, but then or sometime soon thereafter (Folonie, III, 173-174).

Mr. Folonie thought of no reason why Mr. Street might want to cover up, and did not think he was covering up the obtaining of this money (Folonie, III, 177). Mr. Folonie had told Street in the presence of the bookkeeper to make her entries, and had Mr. Street sign the slip he has told about, and Mr. Folonie did not think there was any covering up. He knew it was going on his own books, and assumed the amount that he turned over to Street would go on the latter's records some place (Folonie, III, 177).

Mr. Folonie thought he knew why Mr. Street was in possession of the $6,500.00 check payable to Mr. Folonie. He thought that Mr. Street was on the verge of settling the case, because that had been going along for some time, and Mr. Street doubtless wanted to have funds on hand to meet demands in settling. Mr. Folonie does not know why the check was in his own name, and he never asked Mr. Street (Folonie, III, 172). Mr. Folonie had no

doubt but that Mr. Street had this money with a view to using it, probably in some way in connection with the expense on payments that would have to be made incident to the settlement; that he wanted some cash on hand to meet whatever the eventualities might be. Mr. Folonie assumed that this check was in connection with the Missouri rate litigation, of which he was chief counsel. He never asked Mr. Street a single question about the transaction, because he was personally sure, when they came to the point of settlement, if they did that, Mr. Street would need money, probably in larger amounts than this, since there were so many things that would be the subject of payment of money in connection with any settlement. Mr. Folonie still was not convinced that there would be one, but he believed that Mr. Street's mind moved that way. Mr. Folonie knew of so many things incident to any settlement that would require the payment of money, that Mr. Street would either have to have the power to draw drafts or have some money available (Folonie, III, 173). Mr. Folonie still thought that the compromise would not go through but that Mr. Street had gotten the money with the expectation of using it for a settlement that Mr. Street thought was going through but Mr. Folonie doubted very much that it would (Folonie, III, 177).

Mr. Folonie had other speculations. One was the incident of this settlement of the restitution case, in which there had been a very large depletion of the fund paid into court, by payments to Mr. Mosby, who was the so-styled attorney for the court, and Mr. Sone, clerk of the court, and Messrs. Cook and Lauf who were commissioners. Every one of these people had drawn $500.00 or $1,000.00 per month. One of them drew $1,000.00 per month back to 1933. Another one $500.00 per month back to 1933, lump sum allowances to these people, and the fund had been depleted far in excess of $100,000.00. It was perfectly clear to Mr. Folonie that no settlement of the whole thing, as contemplated by Mr. Street, could be made without coming to a determination as to who was to make good and stand the depletion in that fund, who would have to pay it into court, who might be called on to pay additional sums that might be allowed to somebody for fees and expenses. Witness would think that the sums that would probably be demanded on that might well exceed $100,000.00 and might be $300,000.00, $400,000.00, or $500,000.00. Mr. Folonie knew that Mr. Street

could and likely would need money for that in case of settlement.

Mr. Folonie knew of two other matters under discussion that might well be incidental to the litigation and disposition of it. There had been extreme pressure by agents to be paid and commissions which were withheld while the fund was impounded in court. Mr. Folonie thought it was well within the realm of possibility that some of the leading agents, mostly in St. Louis and Kansas City, had put on such pressure that Mr. Street would have to take an assignment or conveyance of their commission claims and pay them some money, or otherwise they would block the thing and would not go along, or would give it some unfavorable twist.

Mr. Folonie knew that there were suggestions by the attorneys for the State (because Mr. Street had told him so) that they should have fees paid by the companies or fees made available to them by the companies, so the Superintendent could pay the fees that the attorneys claimed he owed them. Mr. Folonie anticipated that no settlement could be made without some kind of allowances to Barker, Jacobs, Weatherby and Lamb, Cook and Lauf (Folonie, III, 174-176). In the Kentucky rate case the fees paid to the lawyers representing the State were fixed by the attorney general, and the companies reimbursed the payments. In that case Mr. Barker was also an attorney (Folonie, III, 212).

There is one thing more, there had been a persistent claim by the companies in the state court suit that this matter was "in pot," and if there was any settlement there might well be some kind of adjustment between state and federal court companies. Mr. Folonie did not know how that adjustment would be made.

There was the further proposition that the parties to the old restitution case differed from the people interested in the current litigation, there being maybe twenty-five companies in the old litigation not in the new, and twenty-five in the new not in the old. That is just an estimate. If any amount were to be paid for expenses in the old litigation, Mr. Folonie knew it could not come out of any sums derived as a result of the new litigation. It would have to come from some other source that Mr. Street might get an advance or borrow money to be prepared to meet. Mr. Folonie is not sure that he thought of all those things at the moment, but he did

think them out afterward. He just knew they all existed. Doubtless some of them flashed through his mind, but not with any particular analysis (Folonie, III, 176).

Plaintiff's Exhibit 334 (III, 516-517) is a list of the companies who were parties in *Aetna* v. *Hyde*, but are not parties in any of the present cases pending in the federal court. They are as follows:

"Name of Company

Abeille Fire Insurance Company
British General Insurance Company of London, England
Buffalo Insurance Company
Carolina Insurance Company
Century Insurance Company, Ltd.
Commonwealth Insurance Company of New York
Employers Fire Insurance Company
Federal Insurance Company
General Fire Assurance Company
Mercantile Insurance Company of America
Nationale Fire Insurance Company of Paris
Netherlands Fire and Life Insurance Company of The Hague
New Brunswick Fire Insurance Company
North British & Mercantile Insurance Company
Northwestern National Insurance Company
Pennsylvania Fire Insurance Company
Phoenix Fire Insurance Company of Paris
Union Insurance Society of Canton, Ltd.
Urbaine Fire Insurance Company"

Plaintiff's Exhibit 333 (III, 515-516) is a list of the plaintiffs in these companion cases in the federal court who were not parties to the restitution judgment or to the old case, *Aetna* v. *Hyde*. They are as follows:

"Court
Number Name of Company

292 Chicago Fire and Marine Insurance Company
296 Columbia Fire Insurance Company
297 Commerce Insurance Company

302 Connecticut Fire Insurance Company
312 Federal Union Insurance Company
317 First American Fire Insurance Company
319 Franklin National Insurance Company
325 Guaranty Fire Insurance Company
329 Home Fire and Marine Insurance Company
341 London and Provincial Marine and General Ins. Co. Ltd.
344 Manhattan Fire and Marine Insurance Company
349 Merchants Fire Insurance Company
350 Mercury Insurance Company
357 National Reserve Insurance Company
362 New England Fire Insurance Company
366 New York Underwriters Insurance Company
372 Northwestern Fire and Marine Insurance Company
379 Patriotic Insurance Company of America
385 Presidential Fire and Marine Insurance Company
387 Provident Fire Insurance Company
398 Sentinel Fire Insurance Company
409 Transcontinental Insurance Company
410 The Travelers Fire Insurance Company
421 Western Fire Insurance Company
422 The World Fire and Marine Insurance Company"

B.

MR. FOLONIE CLEARED CHECKS FOR MR. STREET IN 1936.

In 1936, Mr. Street presented to Mr. Folonie some five, six, seven or eight checks of various insurance companies made payable to Mr. Folonie or his firm, saying that Street had some funds for which he found he had no further use; that he was accounting back to the companies for it, and wanted Mr. Folonie to endorse the checks over to him, which Mr. Folonie did. Mr. Folonie is informed and believes that the checks were for $13,000.00 and $14,000.00 (Folonie, III, 195).

Mr. Folonie did not make any inquiry of Mr. Street as to why those checks happened to be in his name. He never asked Mr. Street a word about it. He did not

pay any attention to whether the checks had been issued in March of that year. He looked at them enough to add them up in his own mind and see the totals to see they were company checks and were old checks, that is, that they had been in Mr. Street's possession some time. Mr. Folonie has since been informed that they were dated in March, 1936. He does not know whether he knew that at the time. If he did, he attached no significance to it, and did not ask Mr. Street why he happened to hold those checks over that period of time (Folonie, III, 195-196). Mr, Folonie has been told it was either in October or November, 1936 (which more or less corresponds with his general memory), when he endorsed the checks.

They were presented to him in Mr. Street's office. Mr. Street got out the checks, asked Mr. Folonie to endorse them to Mr. Street, and made the statement to which Mr. Folonie has testified. That ended the matter so far as Mr. Folonie was concerned (Folonie, III, 197). He knew that he endorsed checks to Mr. Street payable to himself as agent, and made no memorandum of any kind (Folonie, III, 205-206). No doubt Mr. Folonie looked to see how the checks were made payable on the face and made the endorsement identical, whatever it was (Folonie, III, 204).

Mr. Folonie was asked whether he understood the meaning of the word "Agent" on the checks. He answered he had the knowledge any lawyer has of what the relation of principal and agent is, and he understood that the principal was the insurance company and that Mr. Street had gotten these checks for purposes of his own from the companies, and either by mistake or some other way, they had been made payable to him; that Mr. Street wanted the proceeds which belonged to the latter; so Mr. Folonie turned them over to Mr. Street and made no effort to ascertain the purpose for which he, Folonie, was acting as agent (Folonie, III, 204). The disposition of the checks was to turn them back to the companies. Mr. Folonie does not think he thought as far as whether the designation of him as attorney or agent was *descriptio personae*, or the specific creation of agency (Folonie, III, 220-221).

Mr. Street made no explanation as to why he wanted this transaction handled in this manner and Mr. Folonie did not ask him (Folonie, III, 170). Both as to these checks and the other checks heretofore mentioned, Mr. Folonie was asked if the thought

occurred to him that he was debited on the books of the companies with those amounts, and Mr. Folonie said that he never thought of it as a bookkeeping item at all; he was certain in his own mind that however the accountant happened to put it down on the books, that whoever paid those checks over to Mr. Street intended him to have the proceeds of them (Folonie, III, 206). Mr. Folonie did not know that the Phoenix Company, when it issued the check, had debited him with $6,500.00. His judgment and experience did not tell him that such was the fact (Folonie, III, 172). Mr. Folonie did not have the idea or impression that he was debited on the books of the Phoenix Company for $6,500.00, because he never had his fees paid directly by companies through all the years this was going on (Folonie, III, 173). If anybody was trying to put funds in the hands of anybody to settle the case, they were Mr. Street's, not Mr. Folonie's (Folonie, III, 221).

Mr. Folonie did not even ask Mr. Street, and without knowing anything concerning the transaction, except that his employer asked him to sign them over, he did. By his employer he means the chairman of the committee (Folonie, III, 204). Mr. Folonie did not ask Street why he happened to hold these checks for a period of seven or eight months. Mr. Folonie does not know whether he had curiosity as to what it was for, but he did not ask him. Mr. Street's statement that he no longer needed them and was accounting back to the company for them made Mr. Folonie think that Mr. Street had believed he had had some use for them at an earlier date, and that whatever that purpose was had failed. Mr. Folonie had neither direct nor inferential knowledge of the fact that any other company had issued a check except the group he endorsed that day. He did not know how Mr. Street happened to have checks from some six companies payable to Mr. Folonie in these odd amounts. The amount of each check did not suggest how it was arrived at. Mr. Folonie knew he was not receiving it in payment of any fees or services, and from the fact that Mr. Street stated he no longer needed them, Mr. Folonie assumed that Mr. Street had not gotten them with that purpose in mind (Folonie, III, 204-205).

Mr. Folonie made a round number total of the checks in his own mind, just to know what he had done, not adding them up by pennies or even by odd dollars. The first time he was asked about it he said he could not re-

member the exact amount nor even suggest the aggregate, but that he knew it was less than $25,000.00. He made the mental calculation at that time, just like you make a mental calculation of anything you did at the time, just to have a general notion yourself of what you were doing. He made no memorandum (Folonie, III, 205). Mr. Folonie does not think that it went through his mind at all that the $13,000.00 or $14,000.00 was relatively negligible in amount, but thinks he endorsed the checks and made the mental calculation just because he wanted to know what they amounted to, and that is as far as he thought it out. It was neither a big amount nor negligible (Folonie, III, 221).

In the multitude of matters that he has had over many years, he has no doubt that he has endorsed a check without knowing what it was about, and how it happened to be placed in his possession, but he cannot now remember any specific occasion. He cannot remember a single instance where that happened (Folonie, III, 206).

Mr. Folonie identified Defendant's Exhibits 297, 298, 299, 121, 300 and 137 as the checks which he endorsed at Mr. Street's request in November, 1936 (Folonie, III, 198-199). They are as follows:

Exhibit No.	Transcript Reference	Date of Check	Company Issuing Check	Payee	Amount
Def. 297 (Also 147)	III, 200 II, 79).	3/24/36	Pacific Fire Insurance Co.	R. J. Folonie, Agent	1602.17
Def. 298 (Also 148	III, 201 II, 80).	3/24/36	Bankers & Shippers Insurance Company of New York	R. J. Folonie, Agent	2060.97
Def. 299 (Also 149	III, 202 II, 81).	3/24/36	New Jersey Insurance Company - General Account	R. J. Folonie, Agent	1402.27
Def. 300	III, 203	3/23/36	United States Branch of the Sun Insurance Office of London Limited	R. J. Folonie, Agent	3591.06
Def. 121	II, 11	3/23/36	The Hanover Fire Insurance Company	R. J. Folonie, Agent	4116.48
Def. 137	II, 22	3/23/36	Patriotic Insurance Company of America	R. J. Folonie, Agent	249.31

All of the above checks, with the exception of those written by the United States branch of the Sun Insurance Office of London Limited and the Patriotic Insurance Company of America, were endorsed as follows:

"Pay to the order of C. R. Street, R. J. Folonie, Agent"

"For deposit with City National Bank & Trust Company of Chicago, Charles R. Street C. R. Street"

The check written by the United States Branch of the Sun Insurance Office of London Limited was endorsed as follows:

"A.A.D. Received of the Sun Insurance Office Limited of London, $3591.06 In Payment of the Following: Expense Missouri Litigation"

"Pay to the order of C. R. Street, R. J. Folonie, Agent"

"For deposit with City National Bank & Trust Company of Chicago, Charles R. Street C. R. Street"

The check written by the Patriotic Insurance Company of America was endorsed as follows:

"A.A.D. Expense Missouri Litigation

"Pay to the order of C. R. Street, R. J. Folonie, Agent"

"For deposit with City National Bank & Trust Company of Chicago, Charles R. Street C. R. Street"

The last two above mentioned checks are also the only ones containing any notation as to what the money was expended for, said notation being included in the endorsement and being the same on each check, *i. e.* "Expense Missouri Litigation."

The words "R. J. Folonie, agent," below the typewritten words "Pay to the order of C. R. Street" on these checks are in Mr. Folonie's handwriting, except that he cannot read the words on Exhibit 298, and he was not asked about the words on Exhibit 137 (Folonie, III, 197-199).

C.

REASONS WHY MR. FOLONIE DID NOT ASK FOR EXPLANATION. FRICTION BETWEEN MR. FOLONIE AND MR. STREET.

There are quite a number of reasons which might bear on Mr. Folonie's failure to ask Mr. Street if he was going to make a settlement or what he wanted the money for. In the first place, there was a man named Goltra of St. Louis, who had tried to bring about a settlement of this case for a long time, and he was working with an agent in St. Louis named Markham. They approached Mr. Folonie to let them take a hand in bringing about a settlement. Mr. Folonie made it clear to them that he had nothing to do with the case, and would not discuss it with them, and tried to be as courteous to them as he could. Finally, Mr. Goltra came to Mr. Folonie's room in Jefferson City and renewed the subject, claiming to have seen different people in interest, including judges, about the litigation (Folonie, III, 225). This was probably in 1934 or possibly early in 1935 (Folonie, III, 227). Mr. Berger was with Mr. Folonie at the time, and Mr. Folonie put Mr. Goltra out of the room, and told Mr. Goltra that he did not want him to have anything to do with him (Folonie) or the lawsuits; that Mr. Goltra had said he wanted to help and the only way in God's world that he could help Mr. Folonie was to keep his damn nose out of the case. Mr. Folonie resented very much Mr. Goltra's claim that he had been to see judges, which Mr. Folonie thinks was not true, but he said he had. Mr. Folonie knew that Mr. Street talked with Mr. Goltra after that time, and Mr. Folonie supposed and conjectured at the time this settlement was going on, that Mr. Street was, some way or other, making a settlement through those avenues. He now thinks that was not so. Subsequent to the settlement of the case, Mr. Markham made a demand on the committee for fees for Mr. Goltra for his help in bringing about a settlement. Mr. Folonie does not know whether the committee ever paid him or not, but he thinks not (Folonie, III, 225).

As long as Mr. Street was working and negotiating along with people that were highly offensive to Mr. Folonie, he did not want anything to do with it and Mr. Street knew how Mr. Folonie felt about it, because Mr. Folonie told him. There was a tension between the two, that Mr. Street would tell Mr. Folonie nothing and when

Mr. Street got right up to the settlement of the case, the avenues that he was using, which might be Goltra or some other agent, and the fact that Mr. Street was probably hiring other lawyers, because Mr. Folonie knew from Mr. Street's conversation that he got legal advice from somebody besides Mr. Folonie (he does not know who), Mr. Folonie thought Mr. Street might have obligations to other lawyers that were the things that Mr. Street did not want Mr. Folonie to know about (Folonie, III, 225-226).

Mr. Street had repeatedly told Mr. Folonie to keep his nose out of the settlement; that he was handling it alone, and that Mr. Folonie was to have no part in it, and Mr. Folonie was quite certain that if he asked Mr. Street what he was doing, to whom he was paying it, and what he was paying it for, Mr. Street would tell him it was none of his damn business (Folonie, III, 226).

(Note: Further testimony concerning the exclusion of Mr. Folonie from the settlement appears, beginning at page 674 under the subtitle "D. Mr. Folonie's Knowledge and His Participation in the Settlement.")

For six or seven years Mr. Street had subjected Mr. Folonie to the situation where, as general counsel, he could not report to his own clients (Folonie, III, 226). Until about six years before this so-called settlement, Mr. Folonie, as chief counsel, made annual reports to the insurance companies at their annual conventions (Folonie, III, 208). Commencing, perhaps about 1930, Mr. Folonie was instructed by Mr. Street to make no reports to the companies and not to communicate with them except through Mr. Street; that the latter would handle the litigation. Mr. Folonie went to the company meetings each year with a report of the general counsel prepared, but he never delivered any of them for all those years (Folonie, III, 208). In the spring of 1934 Mr. Street got up and stated before the membership of the association, with more than a hundred people present, that his own lawyers were far inferior to the lawyers on the other side of the litigation; that the other side was much smarter and had delayed the case in the federal court for a long time, and that "we" were not smart enough to stop them (Folonie, III, 226).

On a number of occasions Mr. Street found fault with the aggregate of attorneys' fees and the fact that they ran too great, and he frequently complained of Mr. Fo-

lonie's lack of cooperation, as he called it. Mr. Folonie repeatedly told Mr. Street that he could have Mr. Folonie's withdrawal from the case whenever he requested. On one occasion Mr. Folonie wrote Mr. Street a detailed letter stating what each of the lawyers in the case contributed to it; so that Mr. Street might judge which of them he wanted to retain and which he wanted to let go; that Mr. Street was perfectly free to discharge any of them he wanted to, including Mr. Folonie. Mr. Street did not say whether he would or would not, but kept them, all along (Folonie, III, 209).

Mr. Folonie does not know that he would use the word "friction" exactly to describe his relations with Mr. Street (Folonie, III, 163). Some two or three years before 1935, Mr. Street became increasingly of the opinion, which he had not so frequently expressed before, that the cases ought to be settled some way, ending the turmoil in the State of Missouri, even though a decision of the ultimate questions of law could not be arrived at as a result of the litigation. Mr. Folonie disagreed with Mr. Street and repeatedly expressed it to him (Folonie, III, 208-209). Mr. Folonie was, and for years had been, opposed to any settlement of the cases except as incident to a decision of the courts settling the basic principles involved in the case (Folonie, III, 163). He expressed that viewpoint to the committee over and over again, at meetings where they called him. Mr. Street wrote Mr. Folonie on several occasions, recognizing that they were in disagreement on the propriety of settling the case at all (Folonie, III, 209). Mr. Street and the committee knew of these objections. Mr. Folonie thinks most of the insurance executives knew it; certainly all of them who were active in the business knew it. Mr. Folonie frequently expressed these views to Mr. Street, and also at these meetings of insurance companies. He expressed it to anybody who inquired of him, although he did not publicly state it in the meetings, because he was not permitted to state anything (Folonie, III, 163, 208). Mr. Folonie voiced it privately and in public many times, over years, before the settlement was made (Folonie, III, 163).

Up to the very date of the settlement Mr. Folonie constantly adhered to this proposition as the objective of the lawsuit; that the objective ought to be pursued; that no settlement should be made except as an incident to getting a court decision on the issue that he believed to be supreme. He still thinks that that was the appro-

priate and proper objective of the litigation, and that the money was incidental (Folonie, III, 208).

When Mr. Street got close up to the settlement, just before it was made, he told Mr. Folonie that he knew that Mr. Folonie did not agree with him on the subject, but that he wanted to know whether Mr. Folonie was going to actively obstruct what he did. That happened on several occasions while it was in the last few months of discussion, and each time Mr. Folonie told him that it was his lawsuit, and if he settled it Mr. Folonie would not obstruct it but would give him a lawyer's help in what he determined, if it was with the wish of the companies; but Mr. Folonie did not abandon the views he had as to the propriety of it (Folonie, III, 209).

Mr. Folonie had another talk with Mr. Street immediately after the settlement was made, in which Mr. Street inquired whether, from the attitude that Mr. Folonie had continuously had, opposing the settlement, the latter was the person who could go ahead and try to get approval of the courts as to the settlement. Mr. Folonie told Mr. Street that he would do all he could to bring about the settlement, despite his views; that Mr. Street had made the determination, and that his duty as a lawyer was to try to accomplish what Mr. Street directed; but that Mr. Street was perfectly free to get somebody else if he wanted to (Folonie, III, 209).

In 1934 Mr. Street had in contemplation putting the case primarily in the charge of Mr. Igoe and a Kansas City lawyer whose name Mr. Street mentioned, but who, so far as Mr. Folonie knows, Mr. Street never approached on the subject, believing that they had more political tact, as he called it, than Mr. Folonie did. Mr. Folonie told Mr. Street it was perfectly all right; that Mr. Folonie did not claim to know about politics, and if it was a political proposition it was all right to have somebody else handle it, but Mr. Street did not (Folonie, III, 210). At the time when Mr. Igoe's firm was employed, there was no discord between Mr. Street and Mr. Folonie in regard to the matters of employment of counsel (Folonie, III, 161). Mr. Street regarded Mr. Folonie as tactless, and not the proper person to handle such things, and repeatedly told Mr. Folonie so (Folonie, III, 221). They first had talks about these last negotiations prior to March, 1935, when Mr. Street said the talk about settlement was going on (Folonie, III, 162).

Mr. Folonie was quite opposed to the idea of making any settlement, but felt that he had the case won (Long, III, 87). Mr. Haid knew about the strained relation between Mr. Folonie and Mr. Street (Haid, II, 385). He does not really know how he found out about the strained relation. It was more or less a matter of common knowledge of certain people in Chicago, and it is just one of those things that you know about. On account of Mr. Haid's peculiar position (President of the Insurance Executives Association) there was probably not a man in the insurance world that had freer access to the people conducting the fire insurance business in the United States than Mr. Haid, himself. He came in contact with all of them. He knew them, most of them rather well, and he knew Mr. Folonie and Mr. Street rather well. He probably saw them oftener than the actual necessities of his business required. If they were in New York they would probably call on him, whether they had to see him or not (Haid, II, 397).

As Mr. Haid recalls, Mr. Street once said to him that Mr. Folonie very definitely felt that this case should not be compromised; that the lawsuit was won, but that Mr. Street felt that if a good or satisfactory compromise could be made in the light of the competitive situation and all of the other ramifications of the operation of the insurance business in Missouri, that that was the thing to do; but Mr. Folonie would not agree with him (Haid, II, 398).

Mr. Street showed feeling about the matter. Witness would not say that Mr. Street showed any bitterness, just resentment. He said that Mr. Folonie would not go along with him, that he wanted to make this settlement, and, in effect, that he was going through with it anyhow if the companies would approve it. This conversation happened before the first meeting in Mr. Haid's office in 1935. Witness knew then that Street had it in mind to make a settlement (Haid, II, 398-399).

Mr. Terry sensed the friction between Mr. Folonie and Mr. Street. He does not know that he could put his hand on any one particular phase of it (Terry, III, 383). When the three of them were asked to go out of the room (see "Negotiation of Settlement") was not the first time he ever sensed any trouble between Mr. Street and Mr. Folonie. He had known or sensed that there was trouble between them, he would say probably, for several years (Terry, III, 389). He sensed, from his contact with Mr.

Folonie, that from time to time Mr. Street felt that the rate cases were being more or less delayed by the attorneys, rather than pushed to a quick and early conclusion. Mr. Street seemed to resent that. Mr. Street's statements in witness' presence indicating dissatisfaction with the attorneys were nothing concrete, just general statements (Terry, III, 390). Witness has a recollection that at one time Mr. Street thought about employing one or more lawyers for certain specific phases. He cannot recall at this time just what those phases are. It was during the time the litigation was on. Witness thinks it was probably in 1934 but has no definite recollection. He has no recollection of any intimation of that kind in 1935 (Terry, III, 390). Witness thinks it was more or less common knowledge that Mr. Street and Mr. Folonie did not always agree (Layton, III, 83).

Mr. Street expressed himself once or twice to witness that he, Street, had little or no use for lawyers of any kind or description. He said he could handle things better than any lawyers (Terry, III, 389-390). He just did not like lawyers (Terry, III, 390). Mr. Folonie took Mr. Morrison in to introduce him to Mr. Street after Mr. Morrison had for some time been engaged as associate counsel. They went into Mr. Street's office and Mr. Street was busy working at his desk. Mr. Folonie said, "This is Mr. Morrison that I employed in Kansas City to help us in the lawsuit, and I brought him over to introduce him." Mr. Street never looked up, but kept his eyes down on his paper, kept writing, and said, "I don't think much of lawyers," and they left (Folonie, III, 222).

Mr. Street said he had an expense bill of a considerable amount for his expenses in this litigation over a period of years which he wanted paid out of the trust fund. Mr. Folonie asked him if he had any book records showing the details of the expense, and Mr. Street said "No." Mr. Folonie asked him if it was just a case of lumping off an amount covering years of expense, and Mr. Street said it was. Mr. Folonie said he would not sign any check for anything of that kind; that if Mr. Street did not get it currently he would have to show what it was, and that it did not come out of this fund; that it was all right if Mr. Street could get it from the companies some other way. Mr. Street was perfectly furious about that (Folonie, III, 215). Mr. Street gave Mr. Folonie no idea as to the amount of those expenses that he wanted paid. Mr. Folonie never let him get to

the amount, because if he was going to lump off an amount covering years, Mr. Folonie was not going to give a check for it (Folonie, III, 219).

Mr. Folonie compiled an alphabetical list of the companies, stating the amount impounded and the distribution of 6 per cent, March, 1936, and the distribution of 1937, and he laid out a letter to the companies and offered to have it mimeographed in his office with a letter stating in substance: "Enclosed find a list on which appears the amount impounded by you, the amount of the payments made to you in March, 1936, and December, 1937." Mr. Folonie explained to Mr. Street that he had laid it out this way, so that it would serve the purpose of a partial accounting to the companies, and so they could check it against their records to see that the amounts corresponded. It showed the total amount impounded by each company, the 11 per cent paid to them on the former occasion, the 5 per cent being paid to them on this occasion, so they could check against their books to see whether they had got what they were entitled to. It was a proposed partial accounting by Mr. Street and Mr. Folonie of the 30 per cent. To that suggestion Mr. Street wrote the letter of December 28, 1937 (Folonie, III, 216-217; plaintiff's Exhibit 301, III, 218-219). The letter is signed by C. R. Street, is addressed to R. J. Folonie, and is entitled "Mo. Rate Case." It is as follows:

> "I hand you herewith printed slips from the Bank which should have gone to you at the time the checks were sent over yesterday for your signature.
>
> Am also returning your mailing list, so I have no use for it.
>
> Did not send out the letter and the list you drew up—we could have made those calculations in our office in an hour—for two or more reasons:
>
> First—It is, in my opinion, unwise to complicate this matter by repeating to the companies detail of which they are already advised;
>
> Second—It does not seem to me good policy to be telling each and every company what the other had impounded.
>
> And then I might add, third, that each company knows the amount of its impoundings; its accountants are able to calculate 11% and 5% and anything along this line would look like repetition. Then, fourth, there was no time to have these letters

reproduced. The checks went out with a two and one-half line slip as per copy attached.

Having said this much and after several days of very careful thinking, over Christmas at that time when we are all supposed to bear in mind it is a season of peace on earth and good will toward all men, want to say that I have been very deeply hurt, more than in connection with anything I can remember for a long time, by your lack of consideration for me in the handling of this matter and, to be candid, the tactless way in which you did it.

Down in Missouri they have been telling me for years that 'Folonie has no tact' and I have simply turned it off as being another one of those things from Missouri. In this case, however, your lack of tact, your total lack of consideration for me is something which while I do not resent because of being past the resenting age does hurt me very deeply.

Possibly you may feel that my days in the business are numbered and I do not count. Expect, however, to be here for a while and down to my last say nothing is more certain than that I will be heard.

Having said that much, let me add that I forgive, since one of my good qualities is an ability to take into consideration in dealing with any person those peculiarities of temperament and disposition with which the Lord endowed the individual and not to hold them against him.

But I cannot be expected to forget."

This letter does not fairly represent the relationship between Mr. Folonie and Mr. Street during the last few years of the latter's life. Mr. Folonie would say it was an aggravated irritation on his part over what it had been before. Mr. Street had before repeatedly expressed himself that he did not think much of lawyers, including Mr. Folonie. He did not go out of his way to be commendatory of anything Mr. Folonie did which Mr. Folonie just let pass; but he had never before shown the really strong feeling that he did in this letter (Folonie, III, 219). Mr. Street had expressed himself about the disagreement over the settlement but Mr. Folonie considered this letter decidedly unfriendly (Folonie, III, 215).

In December, 1937, Mr. Folonie proposed to Mr. Street that they make a distribution to the companies of all the funds that the trustees had in their possession, to turn all the remaining funds in their hands to the companies. Mr. Street very strongly objected to doing so. He said the funds would be needed in the future. Mr. Folonie knew better than Mr. Street did what expenses they had, and Mr. Folonie said, "Well, Mr. Street, I don't know of anything except attorneys' fees that can come, and we will get more money later on out of this matter, and I can see no occasion for leaving all this money" which amounted to some 7 per cent, more or less, of the impounded funds. "I see no occasion for keeping the money longer and not sending it back to the companies." Mr. Street said he would not consent to it at all. When Mr. Folonie asked him why, or what use he would have for the money, he said that one thing was to equalize the state court companies; so that if the federal court companies got the money, and the state court companies did not, something could be paid to them to put them on a parity.

Mr. Folonie went over Mr. Street's head for the first time from when he was in the lawsuit until then, and went to Mr. Henne; because he did not want the responsibility of keeping money for which he could see no valid use. Mr. Folonie asked Mr. Henne what the latter thought of his position—whether Mr. Henne thought Mr. Street or he was right about it. Mr. Henne said he thought Mr. Folonie was right about it. Mr. Henne came into Mr. Street's office about December, 1937, while Mr. Folonie was there. Mr. Henne mentioned something first and then Mr. Folonie said, in Mr. Street's presence, "Mr. Henne, I am in favor of distributing this money to the companies and getting it out of our hands. We have a profit on it. We have not suffered any loss. I don't want the responsibility as a trustee of keeping it any longer." Mr. Street said, "Well, we have to equalize the state court companies and pay them some money perhaps, and we ought to keep it to see whether we need it for that purpose." In substance, Mr. Henne said, "I can't imagine the president of my company paying his good money out to somebody else when he has won his lawsuit and they have lost theirs, if they have, and I think you are all wrong about thinking the companies will ever consent to doing any such thing." Mr. Street said, "Well, that is what they ought to do."

That was the main reason proposed for keeping the money. Within less than ten days after that time there was a meeting of the committee. Mr. Folonie was called on the telephone and asked to attend as a mere participant. He did not have any part in the meeting, except that he was asked to be there. The members of the committee were present at that meeting. Five or six were there, Mr. Henne for one, also Mr. Shallcross of New York, United States manager of one of the state court companies, and Mr. Morton Jones of Kansas City, president of one of the state court companies. At that meeting they presented some letters which Mr. Folonie had never heard of before, and the various members of the committee expressed themselves as never having heard of before, which Mr. Street had written many years before, dated 1930, 1931, 1932 or thereabouts, in which Mr. Street said in flat words that the companies were all in one pot; if one group won and the other group lost, they were going to divide and see that everybody was treated alike. Witness had never heard of there being any such letters or any such arrangement of any kind or anybody having authorized it until that meeting. Mr. Street had not mentioned when he, Mr. Henne, and Mr. Folonie had met some days before. It impressed Mr. Folonie as extremely strange that Mr. Street would not have mentioned those letters in any way when he talked to them and urged the same subject, without mentioning it. This controversy with Mr. Street over the additional 5 per cent distribution in 1937 affected Mr. Folonie's relations with Mr. Street very sharply (Folonie, III, 212-214). The committee, by unanimous action, ordered a distribution of 5 per cent instead of about 7 per cent in the trustee's hands, leaving about 1 1-2 per cent or 2 per cent as a sort of sop to Mr. Street because he objected so violently to distributing the money before the committee. He assailed several of the members of the committee in that talk. The committee gave an order in writing (Folonie, III, 215).

D.

MR. FOLONIE'S KNOWLEDGE, AND HIS PARTICIPATION IN THE SETTLEMENT.

Until March, 1939, Mr. Folonie had no knowledge that Mr. Street had any fund in excess of the amount in his possession in 1936. Then, for the first time, in Kan-

sas City, he knew there was such a fund or "pot." He then discovered, after Mr. Street's death, that there was a sum of three or four hundred thousand dollars, whatever the amount was, collected in March, 1936 (Folonie, III, 195). After February 1, 1938, Mr. Folonie first discovered that Mr. Street had not accounted for the $100,000.00 (Folonie, III, 195).

Mr. Street did not mention to Mr. Folonie anything about requiring the companies to return to him 5 per cent, or 5-11 of the distribution he had made. It is still hearsay with Mr. Folonie. He first learned that anything of that kind had been done after Mr. Street's death, after February 1, 1938 (Folonie, III, 195). The item of the $100,500.00 which had cleared through Mr. Folonie's office did not come up in the conversations with Mr. Street concerning the decree and appropriate court orders, in any way or manner. It was not mentioned (Folonie, III, 191). During the administration of the trust, there was no mention between Mr. Folonie and Mr. Street of the $100,500.00 item or fund that Mr. Street had cleared through Mr. Folonie's office. It was not discussed in any way or manner, unless it might be said to have been incidentally in contemplation in Mr. Folonie's statement made to Mr. Street on several occasions that the $200,000.00 payable to Mr. O'Malley would require that they get money from the companies in the old rate case, as a separate group, to meet that demand (Folonie, III, 191-192, 193). Mr. Folonie knows that Mr. Street did not use any of the $100,500.00 in payment of any of the amounts stipulated in the settlement agreement because Mr. Folonie drew those stipulations, and made provisions for payments aggregating, as he recalls, $400,000.00 and $200,000.00 to be payable on account of the State's expenses in the old restitution case, which Mr. Folonie was under the impression would be demanded any day by the Superintendent of Insurance, and he assumed that Mr. Street would have to get some more money to raise enough to pay it. After they got the federal court money into their possession, Mr. Folonie made it specific to Mr. Street that such money should not be employed to meet the $200,000.00 payment, because there were different companies in the two groups of cases (Folonie, III, 192-193). Mr. Folonie did not ask Mr. Street whether or not he was going to use it, or had it available for that purpose. Mr. Folonie assumed that Mr. Street still had

it when Mr. Folonie went to Kansas City (Folonie, III, 187-188).

Mr. Folonie knew that Mr. Street was not going to let Mr. Folonie handle the settlement. Mr. Street had repeatedly told Mr. Folonie to keep his hands off the settlement; that Mr. Street was competent to handle it himself (Folonie, III, 221). Whether the companies thought that Mr. Street, or Mr. Folonie, or the two of them together were handling it, Mr. Folonie knew that Mr. Street was going to handle it all by himself. Most, if not all, of the companies also knew that (Folonie, III, 221).

The subject of compromise in the litigation had been under discussion for several years, had apparently taken great activity about one year before the settlement was made, and apparently greatly increased activity in the last sixty days before it was done. Up to the last sixty days Mr. Folonie regarded it all as mere talk. During that period he thought there might be substance to it. During that period there were Missouri newspaper articles that settlement negotiations were going on, and contemporaneously Mr. Folonie was told by Mr. Street that the latter was having discussions on the subject. Mr. Street made it a matter of more frequent mention than he had prior to that time, although he had told Mr. Folonie before that he was negotiating or discussing, or considering the subject of settlement. Mr. Folonie got more information out of the newspaper articles than he did from Mr. Street, but the latest statements, while brief, carried more force with Mr. Folonie, because they then were beyond the bounds of mere gossip. Witness kept a file of those clippings which he thinks still exists and is available. They had discussions prior to March, 1935, stating that talks about settlement were going on, and that it looked probable that something might come of it, etc. (Folonie, III, 161-162). Mr. Folonie never participated in negotiations except to furnish materials Street asked for, and when he furnished it Mr. Folonie knew that Street was going forward with negotiations. When Mr. Street told Mr. Folonie that he was in contact with the officials, or the Superintendent, Mr. Folonie secured some information about rates in connection with the Missouri Inspection Bureau, a tabulation of experience rates that Mr. Folonie knew Mr. Street was using as a background or basis of discussions. Mr. Folonie knew from newspaper articles, and possibly mention from Mr. Street (although

he does not think so) that Mr. Street had had some meeting with the governor of the state in company with some other people (Folonie, III, 163-164). Mr. Igoe and Mr. Ragland were present at that meeting and Mr. Folonie was not. That was probably in April (Folonie, III, 164).

Mr. Folonie had a letter from Mr. Street on March 2, 1935, asking for information which Street said would be of value when, as, and if a settlement was made. There was then nothing very definite about it, but was to the point where Mr. Street wanted more details at his command to accomplish a settlement. Mr. Street said to Mr. Folonie that if it became necessary to discuss the matter with the lawyers, he would let Mr. Folonie know, from which Folonie inferred that Mr. Street was discussing it with the principal. Mr. Folonie told Mr. Berger that the subject of settlement was under discussion (Folonie, III, 162-163). Mr. Folonie believes that Mr. Street mentioned Mr. McCormack in some connection, indicating that Mr. McCormack had been joining with Street in negotiations and that is about all (Folonie, III, 187). Mr. Street did not tell what activities Mr. McCormack had exercised in the matter, but thinks Mr. Street's expression was "helped him."

Question. This was five days after he had delivered over to him the checks?

Answer. That is right (Folonie, III, 187).

Mr. Folonie had known Mr. McCormack for many years and probably talked to him in Kansas City. Mr. Folonie had met Mr. McCormack quite a number of times in connection with adjustment problems of lawsuits in McCormack's capacity as manager of an adjustment company at St. Louis. Before Mr. Folonie went to Kansas City on May 14, he had not talked to Mr. McCormack in regard to a compromise of the case. He probably talked to him in Kansas City, but he did not talk to him in private, and if he talked to him at all, it was in the presence of the people there (Folonie, III, 188).

Mr. Folonie had no conversation with Mr. McCormack or Mr. O'Malley other than in the meeting (Folonie, III, 189). Mr. Street asked Mr. Folonie to carry a message to Mr. Igoe at one time respecting some discussion or meeting Mr. Street was to have with the governor, and Mr. Folonie did that, just conveying the message, whatever it was, indicating that there was a discussion going on to which the governor was a party. The essence of the message was that Mr. Folonie was

to see whether the governor was inclined to obstruct a settlement if the Superintendent and Mr. Street reached a common ground. Mr. Folonie made no memorandum. He assumes that when Mr. Street asked him to deliver the message it was in Mr. Street's office. A newspaper clipping indicates that a meeting was had with the governor in April, 1935; so witness assumes that Mr. Street's request was prior to that, probably early in April (Folonie, III, 164-165). Mr. Folonie went to St. Louis and delivered this to Mr. Igoe for Mr. Street. He saw an account in a newspaper clipping showing who were present at the conference with the governor, including Mr. Folonie's name, but he was not there (Folonie, III, 206). Mr. Folonie does not know which counsel was engaged with Mr. Street in these negotiations for settlement. Generally speaking, Mr. Folonie would say that he did not exchange information or suggestions concerning the negotiations with his associate counsel. Mr. Folonie thinks that to deliver the message he went to see Mr. Igoe. He went so often that he does not know whether this was a special trip or in connection with other things, but he did it. It was something Mr. Street wanted accomplished, and Mr. Folonie got busy. If he did anything else, the other was probably incidental. Mr. Igoe did not report back to Mr. Folonie, and he heard nothing further from Mr. Igoe concerning it (Folonie, III, 164-165). Mr. Folonie has no definite recollection at this time, but he has no doubt that he got word from somebody that the governor was at least not going to obstruct the thing. He does not know whether the governor helped it or not, but at least he was not going to object to a settlement if it was soundly worked out. Mr. Folonie got that word from somebody. He doubts very much whether he got that word from Mr. Igoe, although he may have done so, because he saw Mr. Igoe only now and then. Mr. Folonie does not know when Mr. Higgs died; so he is not clear. If Mr. Higgs were still alive that word was more than likely from Mr. Higgs, but Mr. Folonie has gone through the files and he can state that he did not ever receive a written report (Folonie, III, 206-207).

There was no status of the compromise at the time when the $100,500.00 in check was asked, that Mr. Folonie knew of. He only knew that there had been sufficient substance to it, so that the governor had been interviewed to find out whether or not he would go along with the

settlement. Mr. Folonie thinks that carried more conviction with him that there was substance to the thing, than anything else (Folonie, III, 177).

Mr. Folonie was never present at any meetings or negotiations prior to May 14 between Mr. Street and the Superintendent of Insurance or his representatives. He was not informed, except in a very general way, that Mr. Street even had conferences with them, nor what they were, nor the details of them, prior to the meeting of May 14 (Folonie, III, 210).

Mr. Street did not report to Mr. Folonie in any detail, but in a general way, from time to time, that they were still going along and coming along all right, or words to that effect (Folonie, III, 164). When Mr. Folonie cleared the $100,500.00 of checks, he did not know they were going to have a meeting the next week in Kansas City. It was after that date that Mr. Street told him that Mr. Street wanted him to go to Kansas City to have a discussion of settlement. Up to that time, Mr. Folonie was not sure but what he had already done it. He knew that Mr. Street was quite capable of doing it without talking to him at all (Folonie, III, 226-227).

Mr. Folonie had a telephone conversation with Mr. Street, preliminary to a brief personal conversation. At the latter interview Mr. Street told Mr. Folonie that Mr. Street was entirely qualified to handle the settlement himself, and did not want any interference from Folonie; that if he wanted any advice or help from Mr. Folonie he would ask for it. Yet, he wanted Mr. Folonie to go to Kansas City (Folonie, III, 186).

Before they got to the meeting at the Muehlebach Hotel in Kansas City, Mr. Street told Mr. Folonie about the nature of the compromise, only in the most general terms; that he thought there was a very excellent chance of settling; that he did not believe the governor would stand in the way. Mr. Folonie asked him whether a court decision was a condition precedent, was to be the essence of it, and Mr. Street said that remained to be seen. Mr. Street did not tell Mr. Folonie the terms of the compromise, and the latter did not know, but he went into the meeting room at Kansas City without any information at all as to the proposed terms (Folonie, III, 187).

Mr. Folonie wrote a letter to Mr. Street, dated March 12, 1935, which is Defendant's Exhibit 307 (Hobbs, III, 285, 294). In that letter Mr. Folonie wrote the following:

> "The attorneys for the superintendent know all about your discussions with the superintendent and tried to talk to me about the subject. I avoided discussion and tried to leave the inference that I did not know about it, without putting it into words" (III, 292).

(Note: This letter contained other matter than that set out above. The plaintiffs objected to the introduction of the letter in evidence, and the master sustained the objection, except that the above quoted portion of the letter was admitted. The full letter, the objections, and the arguments appear at III, 285-297.)

Mr. Folonie did not know anything about the terms of the settlement. Witness has no definite recollection to answer whether Mr. Folonie so stated, but that is witness' conclusion. From whatever Mr. Folonie said, witness concluded that Mr. Folonie did not know about the terms of the settlement (Terry, III, 389). Mr. Folonie knew that the settlement was in the air. Mr. Terry thinks they all knew that from the newspaper comments. Mr. Terry is not sure, but he very probably talked to Mr. Folonie about that feature. He may very possibly have told Mr. Folonie that Mr. Street said he contemplated a settlement (Terry, III, 389).

CONCLUSION.

The above constitutes the substance of all the testimony in the case arranged according to subject matter. The length of the analysis and digest of the testimony is due to the fact that the master has purposely refrained from interpreting the evidence, believing that such interpretation would amount to findings of fact.

Respectfully submitted,

PAUL BARNETT,
Special Master in Chancery.